

William Grant Callow
March 31, 2006

A98-009 CIV (HRH)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

UNITED STATES OF AMERICA for the)
use of NORTH STAR TERMINAL &)
STEVEDORE COMPANY, d/b/a NORTHERN)
STEVEDORING & HANDLING, and NORTH)
STAR TERMINAL & STEVEDORE COMPANY,)
d/b/a NORTHERN STEVEDORING &)
HANDLING, on its own behalf,)
Plaintiffs,)

and)

UNITED STATES OF AMERICA for the)
use of SHORESIDE PETROLEUM, INC.,)
d/b/a MARATHON FUEL SERVICE,)
and SHORESIDE PETROLEUM, INC.,)
d/b/a MARATHON FUEL SERVICE,)
on its own behalf,)

Intervening Plaintiffs,)

and)

METCO, INC.,)
Intervening Plaintiff,)

vs.)

NUGGET CONSTRUCTION, INC.; SPENCER)
ROCK PRODUCTS, INC.; UNITED STATES)
FIDELITY AND GUARANTY COMPANY; and)
ROBERT LAPORE,)
Defendants.)

Case No. A98-009 CIV (HRH)

DEPOSITION OF WILLIAM GRANT CALLOW

Pages 1 - 90, inclusive

Friday, March 31, 2006, 9:17 a.m.

Taken on behalf of the Defendants
at

Barokas Martin & Tomlinson
1029 West 3rd Avenue, Suite 280
Anchorage, Alaska

COPY

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<p>1 ANCHORAGE, ALASKA; FRIDAY, MARCH 31, 2006 2 9:17 A.M. 3 -oOo- 4 (Exhibit 1 marked.) 5 WILLIAM GRANT CALLOW, 6 called as a witness herein, having 7 been first duly sworn upon oath, was 8 examined and testified as follows: 9 EXAMINATION 10 BY MR. VIERGUTZ: 11 Q. Good morning, Mr. Callow. 12 A. Good morning, Mr. Viergutz. 13 Q. You know the process: I ask questions; you 14 answer them. If you answer them, I have to assume 15 you understood the question. Is that acceptable? 16 A. Yes, sir. 17 Q. And if you don't understand it, you'll ask 18 me to rephrase it; will you do that? 19 A. Yes, I will. 20 Q. Your report is placed before you, 21 Exhibit 1, and I'd ask you to look at -- and that is 22 your report, you authored it, correct? 23 A. Yes. I want to take a look to see that all 24 the pages are here. 25 (Reviews document.)</p>	<p>1 A. Correct. 2 Q. And the documents that you reviewed to 3 author this report are referenced in the last two 4 pages attached to your report; is that correct? 5 A. That's correct. 6 Q. What is the volume of material, estimate, 7 that -- is it two inches, three inches, 20 inches? 8 A. I would estimate it's between three and 9 four inches. 10 Q. Three and four inches. 11 A. Yeah. 12 Q. Okay. 13 A. I want to make clear that we're talking 14 about the documents involved in this case, as 15 opposed to, you know, any cases that I reviewed or 16 something like that, but, yeah. That wouldn't have 17 been a thick -- real thick anyway, but, yes, that's 18 correct. 19 Q. Have you ever represented a surety? 20 A. No. 21 Q. If we'd go to page 3 of your report. Did 22 you review those letters referenced in the quote 23 under the "subject" heading, and then the next 24 paragraph it says, "We acknowledge receipt of serial 25 letter 611-19, dated August 6, '97 and serial letter</p>
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<p>1 Yes, that's correct. 2 Q. Okay. The first paragraph, the last two 3 sentences, it says, "I have been requested to opine 4 as to the treatment of claims by USF&G. I reviewed 5 documents provide to me by the attorneys for the 6 claimants and discussed this case with them." 7 Who did you discuss the case with, 8 Mr. Sewright? 9 A. Yes, sir. 10 Q. And what did you -- 11 A. And Mr. Shamburek. 12 Q. And did you talk to Mr. Sewright outside 13 the presence of Mr. Shamburek? 14 A. I don't recall. I may have. I can't 15 remember. I may have, but I think most often I -- I 16 talked to Mr. Shamburek outside the presence of 17 Mr. Sewright, but I don't know that I spoke to 18 Mr. Sewright outside the presence of 19 Mr. Shamburek. 20 Q. So you don't know? 21 A. Yeah, I can't remember. I don't -- it's -- 22 I'm just saying it's possible, but I don't have a 23 recollection if I spoke to him. 24 Q. Okay. You never saw any deposition 25 transcripts of any USF&G employees, correct?</p>	<p>1 611-21, dated August 11, '97"? 2 A. I'm not sure, as I sit here today. I think 3 that I did. Let's see if these are -- if those are 4 referenced in the last -- in that last page. 5 (Reviews document.) 6 I can't be sure. I suspect that I did. 7 (Exhibit 2 marked.) 8 MR. SHAMBUREK: Now, Herb, I'd just like to 9 note that in an e-mail exchange I had asked you to 10 mark any exhibits that you were going to use for the 11 deposition, and you said there would be no 12 exhibits. 13 MR. VIERGUTZ: Outside what his report is. 14 And this is I believe what you saw as termed on the 15 second to the last page "Documents produced by USF&G 16 and marked 'USF&G' with some blank documents." 17 BY MR. VIERGUTZ: 18 Q. Does this look like what you reviewed? 19 A. What's just been marked as Exhibit 2? 20 Q. Correct. 21 A. Well, I have more documents than this that 22 I reviewed, so it's -- this is only about an inch 23 thick or so. And, yeah, some of these look 24 familiar. 25 MR. SHAMBUREK: Herb, I'll also observe,</p>

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<p style="text-align: right;">Page 8</p> <p>1 for the record, that I sent you an e-mail note and 2 said we'd make the documents that he reviewed 3 available for your inspection or copying. 4 MR. VIERGUTZ: Uh-huh. Uh-huh. 5 BY MR. VIERGUTZ: 6 Q. Why is the content of those two letters, do 7 you know, not cited in your report? 8 MR. SEWRIGHT: Object to the form of the 9 question. I -- 10 MR. VIERGUTZ: Hold it. Hold it right now. 11 Object to the form of the question, period. 12 Anything further than that I'm not going to put up 13 with. That's the only proper objection, and I think 14 Mr. Shamburek is the attorney representing 15 Mr. Callow; is that correct? 16 MR. SHAMBUREK: Mr. Callow is the expert 17 for all of the claimants, so I have been the one 18 who's talked most with him, but Mr. Sewright 19 represents North Star Stevedoring. 20 MR. VIERGUTZ: Okay. 21 MR. SEWRIGHT: I just didn't understand 22 what letters you're referring to. 23 BY MR. VIERGUTZ: 24 Q. Can you answer my question? 25 A. I understand that you're referring to</p>	<p style="text-align: right;">Page 10</p> <p>1 position taken by an owner. 2 A. I don't -- if we're talking about the 3 general contractor, there is an implied duty of good 4 faith and fair dealing in every contract. And if 5 that dispute is based on -- has a good faith basis, 6 then a legitimate dispute is not in and of itself 7 evidence -- or is not in of itself bad faith, that's 8 correct. 9 Q. Would you define bad faith for me, please. 10 A. Well, bad -- there are a couple of 11 different standards for bad faith. But bad faith is 12 the breach of the duty of good faith and fair 13 dealing that is implied in every contract, including 14 every insurance contract. And, according to Alaska 15 case law, every surety contract. 16 Q. I understand that. But bad faith means 17 what? 18 A. Well, it means lots of different things 19 depending on the context of the case. But basically 20 what it means is that a party takes a position that 21 is unreasonable or engages in conduct that is 22 unreasonable. Or -- or in reckless disregard for 23 rights, that can be -- there are numbers 24 of different -- there are different types of bad 25 faith. And I'm speaking now about Alaska law.</p>
<p style="text-align: right;">Page 9</p> <p>1 serial letter 611-19 and serial letter 611-21, 2 correct? 3 Q. Right. 4 A. If you could point those out to me, refresh 5 my recollection. 6 Q. No. My question to you is -- 7 A. Oh. 8 Q. -- do you recall why those letters are not 9 referenced in your report? 10 A. Well, in fact they are at page 3, and 11 that's the reference I made to them. But I didn't 12 believe that any further reference to them was 13 relevant to the opinions that I was asked to give 14 about USF&G's duties in this case. 15 Q. Okay. In your history, do you find it 16 unusual for a general contractor to dispute a 17 position taken by an owner? 18 A. Certainly it happens. Is it unusual? I 19 wouldn't say it's unusual, no, I wouldn't say that 20 it's like a strange occurrence, if that's what you 21 mean. 22 Q. Is that bad faith? 23 A. Would you explain to me what you mean by is 24 it bad faith, to dispute? 25 Q. For a general contractor to dispute a</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. And who determines whether the position is 2 unreasonable? 3 A. Well, I guess the question becomes at what 4 point. But usually that is determined in a court of 5 law, sometimes by a jury, or sometimes by a judge. 6 Q. And if the allegation has no merit, it 7 could potentially never make it to a judge or a 8 jury; is that correct? 9 A. If the -- I want to make sure that we're on 10 the same page. If the allegation of bad faith has 11 no merit, yes, that's true -- well, I guess it could 12 make it to a judge but it could be dismissed on 13 summary judgment, that's correct. 14 Q. If you'd go to the bottom of page 3, the 15 final sentence. It says: The letter states that it 16 was courtesy copied to United States Fidelity & 17 Guarantee Company, Attention Bill Wells, 4220 B 18 Street, Anchorage, Alaska 99503. 19 A. Yes, sir. 20 Q. Do you know whether Mr. Wells works at that 21 location? 22 A. I do not have any independent knowledge of 23 that. 24 Q. Okay. Are you familiar with Willis of 25 Alaska?</p>

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<p>1 other types of product, under those circumstances, 2 the majority of the case law, last time I reviewed 3 it, was that normally those agents are considered 4 the agents of the person purchasing the insurance. 5 They have their duty to them, but if that duty is 6 breached -- for example, if they don't -- if they 7 don't supply a good product, they can be made 8 liable. But you can't, for their negligence, 9 necessarily hold the insurer liable. There are some 10 exceptions, but that's the general rule. 11 Q. I appreciate that discussion. However, in 12 this case -- 13 A. Okay. 14 Q. -- do you intend to offer an opinion that 15 Willis was the agent of USF&G? 16 A. Do I intend to offer -- I haven't been 17 asked that specific question. So based on what I 18 know at this point, I can't answer that. But the 19 opinions that I expect to offer in this case, at 20 this time, are the ones that are set forth in my... 21 Q. In your report, Exhibit 1? 22 A. In my report, yeah. 23 Q. And that's not an opinion contained within 24 Exhibit 1, is it? 25 A. Well, I'm just -- you know, let me -- I</p>	<p>1 arisen in the context of personal injury, sometimes 2 the personal injury work spins off into insurance 3 bad faith. 4 I have, in recent years, been 5 undertaking -- I've been doing less of that and 6 doing a variety of other things. I mean, I did -- 7 I've done some discrimination claims, Title -- 1981 8 claims. 9 I have been doing -- I have been working 10 with some Scandinavian clients, assisting them in 11 providing -- in obtaining and monitoring the legal 12 work that's done for them in the United States. 13 I have been working on a number of class 14 action suits involving various things, ATM machines, 15 ATM fees. 16 And most recently, I've gotten involved in 17 a case involving a derivative shareholder suit in 18 California. It's a variety of things. 19 Q. What are the differences between -- 20 A. No divorces. 21 Q. -- between a surety and an insurer? 22 A. Well, a surety is actually providing 23 protection to -- it's a type of a third-party 24 contract. And the best definition of it and 25 distinction is in a case up here called the Loyal</p>
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<p>1 want to make sure that -- I haven't reviewed this. 2 (Reviews document.) 3 I guess -- I guess my position is this, 4 that under certain circumstances if someone 5 voluntarily begins to act in a manner whereby they 6 assume duties, they can therefore become liable for 7 not doing those duties in a reasonable and proper 8 manner. 9 To the extent that Ferguson was involved in 10 this and obtained information that he knew or should 11 have known, should have been supplied to other 12 parties, you know, I think that there is -- there is 13 an argument to be made there that Ferguson could be 14 considered to be an agent of sort. 15 Q. Do you intend to offer an opinion that 16 Mr. Ferguson breached his duties? 17 A. At this point I tend to only offer the 18 opinions that I -- that I have set forth in here. 19 Q. And that's not an opinion contained in 20 Exhibit 1, is it? 21 A. No. 22 Q. What is the general area of your practice? 23 What is -- what law do you practice? 24 A. Well, I have been doing a fair amount of 25 insurance coverage work. And sometimes that has</p>	<p>1 Order of Moose, I don't know what the cite is, but 2 that will tell you specifically what it is. 3 But in the normal insurance circumstance, 4 an insurer provides protection to the insured 5 against third-party liability. A surety, on the 6 other hand, is really providing protection to a 7 third party. And that's the essential difference. 8 The person who's paying the premium is 9 paying a premium for the protection of third -- of 10 third parties. But the coverage that is being 11 provided is being specifically provided to the third 12 party, so it makes it different than what is called 13 a third-party insurance contract -- or I'm sorry. 14 What's called a third-party claim where, in the 15 average automobile case, someone -- I have insurance 16 on my car and for driving, I run a stop sign, I 17 injure somebody, they sue me, my insurance company 18 defends, that's a third-party claim. 19 Most courts hold that the insurer, even 20 though I bought insurance to maybe protect the 21 person that I might injure, that is -- the courts 22 say, no, you really bought insurance, in that 23 circumstance, to protect yourself. 24 In the case of a surety, there I'm 25 buying -- I'm paying a premium to protect a third</p>

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<p style="text-align: right;">Page 20</p> <p>1 party specifically from a particular contingency, 2 and in this case it's payment. 3 Q. What are the differences between the duties 4 of a surety and an insurer? 5 A. Well, I assume you're talking about -- in 6 terms of claims investigation and handling; is that 7 correct? 8 Q. You can answer that. 9 A. Okay. The essential difference -- well, in 10 fact, both have a duty of good faith and fair 11 dealing. Under Alaska law, I'm speaking of Alaska 12 law. Alaska law is applicable under the Miller Act, 13 and the duties of good faith and fair dealing in an 14 insurance context, whether for a bonding company or 15 for any liability company, are essentially identical 16 when it comes to duties to investigate claims. And 17 to investigate them thoroughly, to reasonably pay 18 claims, all the duties that are set forth or the 19 standards that are set forth in the Alaska Insurance 20 Code, Title 36, and in the appropriate 21 administrative regulations. 22 But in terms of their duty to investigate 23 claims and to pay claims, duties are similar. 24 Q. Does a surety have a duty to the 25 principal?</p>	<p style="text-align: right;">Page 22</p> <p>1 none, the principal wouldn't be harmed by the 2 negligence, there would be no interest that the 3 principal would have if the surety overpaid a claim 4 or paid an invalid claim. The surety would be just 5 out the money. 6 Where there is an indemnity agreement, that 7 indemnity agreement limits the right of the surety 8 to recover from the principal, to the extent that 9 the surety has been negligent and overpaid a claim 10 or paid an invalid claim. 11 So the surety still has the obligation to 12 carefully investigate and pay claims as required by 13 law, always has. And that obligation is to the -- 14 what I will refer to as the thirds; the third -- or 15 the insureds, the third-party beneficiaries. 16 Existence of the indemnity agreement merely 17 means that there is -- there is also, rather than a 18 duty, really -- I hate to rephrase it as a duty, but 19 it's -- it's a circumstance where the negligence of 20 the surety, as I've said before, in failing to 21 properly investigate a claim, paying any claim that 22 is invalid or overpaying a claim, limits the right 23 to indemnity. 24 Q. I don't see, in the last two pages attached 25 to your report, that you reviewed the general</p>
<p style="text-align: right;">Page 21</p> <p>1 A. Well, yes. Particularly where there 2 is a -- there is an indemnity agreement of some 3 sort. There is a duty to the principal, there is no 4 question about that. 5 But the -- there is -- there is a duty to 6 the insureds and -- let me -- let me step back. 7 You can't have a surety just recklessly 8 paying claims and then looking to its principal and 9 saying, now you got to pay us back. They have to 10 act reasonably. They have to reasonably investigate 11 the claim, do it reasonably promptly, and then -- 12 and then pay the claim. And at that point they can 13 turn to their principal. 14 But if it turns out that they did any of 15 that negligently and paid too much, they have -- to 16 that extent, forfeited their right to collect from 17 the principal. 18 Q. How is that duty impacted, if you know, by 19 the general agreement of indemnity? 20 A. How is -- say that again, please. 21 Q. How is the duty to the principal impacted, 22 if you know, by the general agreement of 23 indemnity? 24 A. Well, the general agreement in indemnity -- 25 maybe the best way to put it is this: If there were</p>	<p style="text-align: right;">Page 23</p> <p>1 agreement of indemnity in this case. Did you? 2 A. Well, I'd have to go back and look at my -- 3 I'd have to look at my notebook to see that, if I 4 did or not. I can't -- as I sit here today, I can't 5 remember if I did. I certainly understood that 6 there was one and I -- and I considered that to be 7 something important to know. 8 Q. The second to the last page of the 9 attachment to your report, it's a letter dated 10 February 8th, 2006, the final paragraph says, "All 11 of the pleadings, discovery, disclosures and 12 transcribed depositions are readily available for 13 your review. Please let me know what you would like 14 to review." 15 Did you advise Mr. Shamburek or 16 Mr. Sewright that you wanted to review any documents 17 that are not referenced above this paragraph? 18 A. That's a good question. I don't believe 19 so. I -- you know, I'm trying to think. I may 20 have, but specifically, I don't recall asking to see 21 that one. 22 Q. What is the duty of the surety to the 23 obligee? 24 A. Well, there are lots of duties, but if 25 we're talking about the -- in the claim context,</p>

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<p>1 there is the duty to promptly investigate a claim, 2 to reasonably investigate the claim. To pay the 3 claim, any claims that are valid, in a prompt 4 manner. There is a duty to communicate in a timely 5 fashion concerning the claims. And most of the 6 duties, or many of the duties, are embodied in 7 Title 36 of the Alaska Insurance Code and in the 8 corresponding administrative regulations. 9 Q. Do you know Mr. John George? 10 A. I've spoken to him on the phone. Many 11 years ago. 12 Q. Do you have -- based on your knowledge of 13 him, do you intend to offer an opinion that he's 14 either competent or incompetent, or don't you have 15 sufficient knowledge to render an opinion? 16 A. Well, I will say, this is what I know, I 17 don't -- I can't say, as I sit here, that the man is 18 incompetent, by any means. In fact, I contacted him 19 years ago about the possibility of having him serve 20 as an expert witness for me. I didn't hire him. I 21 won't tell you that it was because I thought he was 22 incompetent. 23 In my dealings with him, he was courteous 24 and professional. I know that he has experience in 25 the field. I don't know a great deal about his</p>	<p>1 Q. And was that covered in your continuing 2 education course? 3 A. No, sir. 4 Q. In your practice do you find it unusual for 5 an attorney and a client to take positions 6 contradicting or confrontational to other attorneys 7 and their clients? 8 A. I don't find that -- I don't find that 9 unusual. 10 Q. Page 5 of your report, around the middle of 11 the page. There's a sentence that reads, and my 12 question is going to be... 13 The darkened part. "At this time, I would 14 appreciate it if you could provide me with any 15 information regarding whether this is an ongoing 16 account, because based on the information available 17 to me at this time some of the defenses of the 18 principal may be questionable." Why is that 19 darkened? 20 A. My recollection, as I sit here, without 21 looking at the original document, is that it was -- 22 it was originally darkened in the first place. 23 Q. Okay. 24 A. I mean, I put in "emphasis added" and I 25 can't remember -- it may be that I added the</p>
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<p>1 background in the industry. I know that he served 2 as the director of the Division of Insurance for a 3 while and that's why I contacted him. 4 (Phone rings, off record.) 5 BY MR. VIERGUTZ: 6 Q. Page 12 of your report, which is the final 7 page prior to your signature there. 8 A. Uh-huh. 9 Q. It says, "Other Testimony," and in the 10 final sentence of that paragraph it says: I have 11 also taught a continuing legal education course on 12 the subject of discovering and proving insurance bad 13 faith. 14 A. Yes. 15 Q. Have you ever taught a continuing legal 16 education course on the subject of discovering and 17 proving surety bad faith? 18 A. Well, to the extent that I consider 19 sureties and did consider -- have considered 20 sureties to be insurers, the answer is yes. But 21 specifically, in that particular course, I never 22 discussed sureties. 23 Q. Are you aware that there is a body of law 24 called suretyship law? 25 A. Yes.</p>	<p>1 emphasis, but I can't recall. 2 But, you know, clearly that -- that was 3 important, that is important to me, because this was 4 the first time, and this was early on, that we know 5 that Ms. Poling understood that there were -- that 6 the defenses were -- of the principal were 7 questionable, or may be questionable. 8 Q. She's not saying they were questionable, is 9 she? 10 A. No. No. "May be." 11 Q. And you never spoke to Ms. Poling? 12 A. No, sir. 13 Q. Regarding her intent? 14 A. No. 15 Q. The next line, that's no longer a part of 16 Ms. Poling's letter, correct, where you're saying 17 "USF&G acknowledged the questionable defenses of 18 Nugget at least by October '97"? 19 A. Yes. 20 Q. And where did they acknowledge it? 21 A. Oh. If you look up at what I was referring 22 to here, as I recall, is that by Ms. Poling's e-mail 23 to Bill Wells of 10/24, and that actually -- since 24 it's an e-mail, I don't -- I don't believe now that 25 that was originally highlighted, so I guess I</p>

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<p>1 that were on the documents that were provided by 2 USF&G. 3 BY MR. VIERGUTZ: 4 Q. Okay. And then No. 44 on the bottom left. 5 A. Yes, I'm here. 6 Q. Do you see that letter? 7 A. Yes, the 17th. 8 Q. That's December 17th? 9 A. Correct. 10 Q. You've seen that letter before today? 11 A. Yeah, I believe so. 12 Q. And there Nugget's attorneys are responding 13 to USF&G; is that correct? 14 A. That's correct. 15 Q. And then if you turn to the same exhibit, 16 No. 2, page 52. 17 A. Yes. 18 Q. That's February 17, '98, and that's Poling 19 receiving a letter again from Oles Morrison, Nugget 20 attorneys? 21 A. That's correct. Dealing with the Chugach 22 rock claim, yes. 23 Q. And then if we could go to page 74. 24 A. Yes, I'm there. 25 Q. This is a September 1 letter from Oles</p>	<p>1 that issue. Be that as it may, it's neither your 2 nor my deposition. 3 BY MR. VIERGUTZ: 4 Q. Now, if we could go back to 055. That's a 5 March 3rd, '98 letter. 6 A. Yes. 7 Q. That's after January 5th, '98, referenced 8 in Exhibit 1, your report, at paragraph 3 that we're 9 talking about, correct? 10 A. Yes. 11 Q. And this is a letter that's -- goes to 12 page 66, is that correct, that would be 11 pages 13 long? 14 MR. SHAMBUREK: Herb, I'm just going to 15 object to the extent that this letter was not in the 16 documents that were provided by USF&G to us, and it 17 thus cannot be in the materials conveyed to 18 Mr. Callow, because he did not receive anything 19 beyond what you provided to us. 20 MR. VIERGUTZ: Then it was by your omission 21 and not mine, because I provided it to you with a 22 cover letter a couple days after realizing that 23 omission from these documents. 24 MR. SHAMBUREK: I don't recall the cover 25 letter or the document. Do you have a copy of it?</p>
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<p>1 Morrison to USF&G thanking them for talking to them 2 about the subpoena for the records deposition and 3 asking that USF&G forward their records to them; 4 correct? 5 A. May I just take a moment here and just 6 review this? 7 Q. Sure. 8 A. (Reviews document.) 9 Yes, that's correct. 10 Q. Where did you come to the understanding 11 that USF&G did not receive the briefs for the Ninth 12 Circuit and the pleadings and summary judgment and 13 such? 14 A. Because nothing that I reviewed indicated 15 to me that they got that information. 16 Q. And so you never saw a couple boxes of 17 documents forwarded by USF&G which contained those 18 materials; is that correct? 19 A. That's correct. 20 MR. SHAMBUREK: Herb, there's still an 21 objection to foundation, to the extent you say there 22 were boxes, because I don't think there were any 23 boxes of information provided by USF&G during the 24 document review in November and December. 25 MR. VIERGUTZ: You and I stand at odds on</p>	<p>1 MR. VIERGUTZ: No. 2 MR. SEWRIGHT: Herb, have you totally 3 reordered these by date from what you produced? 4 MR. VIERGUTZ: I'm not being deposed and 5 I'm not -- 6 MR. SHAMBUREK: Herb, I'm going to 7 object. 8 MR. VIERGUTZ: -- prepared to answer 9 questions. 10 MR. SEWRIGHT: Yeah, but -- yeah, but -- 11 MR. SHAMBUREK: These are not the documents 12 that were provided by you in this order that were 13 then provided to Mr. Callow. I sent an e-mail and I 14 said if you wanted to review those documents I would 15 provide them. These are more, they're different, 16 and they're marked with other numbers. So we're 17 going to object to any of these questions. 18 BY MR. VIERGUTZ: 19 Q. Now, page 55. 20 A. Yes. 21 Q. You've never seen that letter before? 22 A. I don't recall seeing this letter, that's 23 correct. 24 Q. Would you say that that is an additional 25 document?</p>

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<p style="text-align: right;">Page 44</p> <p>1 A. Dealing with Shoreside?</p> <p>2 Q. Explaining the position of Nugget to USF&G.</p> <p>3 A. Well, let me say this. It depends on how</p> <p>4 much time you want me -- I haven't -- I'd like to</p> <p>5 review it, but would you like me to just review it</p> <p>6 briefly and say --</p> <p>7 Q. Whatever you need to answer that question.</p> <p>8 A. All right. Let me just take a moment here.</p> <p>9 (Reviews document.)</p> <p>10 MR. SHAMBUREK: While we're still on</p> <p>11 record, Herb, do you have a copy of the transmittal</p> <p>12 letter of this document?</p> <p>13 Do you recall seeing a transmittal letter,</p> <p>14 Mr. Sewright?</p> <p>15 MR. SEWRIGHT: We can talk off the record</p> <p>16 about it, Mr. Shamburek, I'm not going to get into</p> <p>17 that right now.</p> <p>18 MR. SHAMBUREK: Okay.</p> <p>19 Do you have a transmittal letter, Herb?</p> <p>20 MR. VIERGUTZ: I'm not responding to</p> <p>21 questions at a deposition of a witness.</p> <p>22 MR. SEWRIGHT: Do you want to go off the</p> <p>23 record, Steve?</p> <p>24 MR. SHAMBUREK: Let's go off the record.</p> <p>25 THE WITNESS: Meanwhile, I'm going to</p>	<p style="text-align: right;">Page 46</p> <p>1 MR. VIERGUTZ: No, I'm not. 055 was a</p> <p>2 letter, through 066, that for some reason I omitted</p> <p>3 from the package, and it was either the day after or</p> <p>4 the day after that, I forwarded it to both of you,</p> <p>5 Mr. Sewright and yourself, as well as, I believe,</p> <p>6 Traeger Machetanz at that time.</p> <p>7 And I think, and I'll look, and I could be</p> <p>8 wrong, but I believe my correspondence said just put</p> <p>9 it in there in date order. Which should have been</p> <p>10 in there.</p> <p>11 But, in any event --</p> <p>12 THE WITNESS: I need to know what the</p> <p>13 question was again.</p> <p>14 BY MR. VIERGUTZ:</p> <p>15 Q. My question simply on this letter is, does</p> <p>16 this letter appear to provide USF&G with information</p> <p>17 from Nugget on the claims?</p> <p>18 A. Correct, yes.</p> <p>19 Q. Then Exhibit 3, if we could.</p> <p>20 MR. SHAMBUREK: Herb, again, I have to</p> <p>21 object because I had sent you the e-mail and just</p> <p>22 asked you to pre-mark any exhibits that were going</p> <p>23 to be used and you said there would be none.</p> <p>24 BY MR. VIERGUTZ:</p> <p>25 Q. This is a letter that's within Exhibit 2.</p>
<p style="text-align: right;">Page 45</p> <p>1 review this.</p> <p>2 MR. VIERGUTZ: My only question is, is it a</p> <p>3 letter that appears to respond.</p> <p>4 MR. SEWRIGHT: It's a multi-paged letter,</p> <p>5 Mr. Viergut.</p> <p>6 Can we go off the record for a moment?</p> <p>7 It's about time to break anyway. It's about 10:30.</p> <p>8 Are we off record? We're not going to go</p> <p>9 off record until Mr. Viergut says we can.</p> <p>10 COURT REPORTER: I'm waiting until</p> <p>11 everybody agrees to go off record.</p> <p>12 MR. VIERGUTZ: Okay. Fine.</p> <p>13 COURT REPORTER: Off record.</p> <p>14 (Off record.)</p> <p>15 (Exhibit 3 marked.)</p> <p>16 MR. SHAMBUREK: Herb, I'd just like to</p> <p>17 point out that Exhibit 2 was represented to be the</p> <p>18 documents provided to the claimants from USF&G.</p> <p>19 Some of these documents were provided to the</p> <p>20 claimants as a group.</p> <p>21 Now, I don't recall this March 3rd, 1998</p> <p>22 letter; we can deal with that later. But I don't</p> <p>23 think you're representing that it was included</p> <p>24 initially in the packet of material that you</p> <p>25 provided.</p>	<p style="text-align: right;">Page 47</p> <p>1 A. You're referring to the top letter on</p> <p>2 Exhibit 3?</p> <p>3 Q. Yeah. Some of the others may not, but I</p> <p>4 assumed these are all produced.</p> <p>5 If you go to the bottom of page 6.</p> <p>6 A. Of my report?</p> <p>7 Q. Yeah.</p> <p>8 A. Okay.</p> <p>9 Q. That's Exhibit 1.</p> <p>10 A. Yes.</p> <p>11 Q. And there you're saying, about in the third</p> <p>12 or fourth sentence, there does not appear ever to</p> <p>13 have been a discussion of the possible liability for</p> <p>14 the claims of Shoreside Petroleum or Metco, although</p> <p>15 I understand their claims and defenses are similar</p> <p>16 to North Star, blah, blah, blah.</p> <p>17 A. I need to -- you lost me. Where was this?</p> <p>18 Q. Oh, down here. Third or four sentence - --</p> <p>19 A. I see.</p> <p>20 Q. -- from the penultimate paragraph.</p> <p>21 A. Got it.</p> <p>22 Q. And maybe you should read that to the</p> <p>23 bottom.</p> <p>24 A. (Reviews document.)</p> <p>25 Okay.</p>

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<p>1 Q. Then if you'd go to page 4 of Exhibit 3. 2 MR. SEWRIGHT: You mean the fourth page? 3 MR. VIERGUTZ: Yeah. 4 THE WITNESS: That's the letter dated 5 December 3? 6 BY MR. VIERGUTZ: 7 Q. Yeah. That's to Shoreside, correct? 8 A. Yes. 9 Q. From USF&G? 10 A. Yes. 11 Q. And then the next page is a letter to 12 Shoreside dated April 7th? 13 A. Yes. 14 MR. SEWRIGHT: 19 -- 15 THE WITNESS: '98. 16 BY MR. VIERGUTZ: 17 Q. Yeah. One is December 3, '97, one is 18 April 7, '98. Have you ever seen those before? 19 A. I think so. I'm not sure. 20 Q. Are they not documents that discuss the 21 potential liability of Shoreside? 22 A. You just told me that these had been part 23 of the packet, but let me just see. Repeat the 24 question, please. 25 Q. No. I said page 1 was. The others had</p>	<p>1 MR. SHAMBUREK: In his report. 2 MR. VIERGUTZ: Yeah. 3 MR. SHAMBUREK: Not to these boxes of 4 documents that you refer to, or other documents. 5 In your letter you stated here that you 6 wouldn't pay for any of the time to prepare for the 7 deposition. So he couldn't be tasked with taking a 8 look at the entire court file or all the other 9 documents. That was the understanding going into 10 the deposition. 11 THE WITNESS: Well, isn't -- let's go back 12 to my letter at page 6. There does not appear ever 13 to have been a discussion of the possible liability 14 for the claims of Shoreside Petroleum and/or Metco, 15 although I understand their claims, defenses to 16 them, are similar to the ones involving North Star 17 Terminal and Stevedoring. 18 This, what we're talking about here in the 19 exchanges between Mr. Lukjanowicz and Ms. Poling, 20 this is an exchange from Ms. Poling and 21 Mr. Niebrugge, and so I mean, that's consistent. 22 BY MR. VIERGUTZ: 23 Q. Okay. Maybe it's my mistake. What I 24 understood you to be saying there is that neither 25 the Shoreside nor Metco claims were ever addressed</p>
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<p>1 been produced. 2 A. Okay. So the question is what? 3 Q. Are not pages -- the two letters we talked 4 about, to Shoreside, pages 4 and 5 of Exhibit 3. 5 A. Yes, the December 3 and the December 7th, 6 yes. 7 Q. Are they not documents that -- 8 A. Or April 7th. 9 Q. You've got a sentence in your report here, 10 and that's what I was trying to get you to read. 11 "There does not appear ever to have been a 12 discussion of the possible liability for the claims 13 of Shoreside Petroleum, Inc. and/or Metco, although 14 I understand that their claims, and defenses to 15 them, are similar to ones involving North Star 16 Terminal and Stevedoring." 17 MR. SHAMBUREK: Herb, I'm going to object 18 to this exhibit. Your letter of March 21, 2006, 19 which we can mark, said: He, Mr. Callow, should 20 know what his report says and there will be no 21 further exhibits, Herb Viergutz. 22 MR. VIERGUTZ: Well, yeah. And I assume 23 he's read, from what he's attached here to his 24 report, the correspondence and things that are being 25 referred to.</p>	<p>1 by USF&G. 2 A. Well, no. Here -- I mean, the April 7th 3 letter they're certainly being addressed. 4 Q. Okay. 5 A. April 7 of '98. 6 Q. Do you recall ever seeing a Shoreside proof 7 of claim in any document you reviewed? 8 A. I don't recall. I don't recall seeing 9 one. 10 Q. Do you recall ever seeing, in what you 11 reviewed, any letter from Shoreside to USF&G 12 transmitting documents to prove up their claim? 13 A. No, I don't. I can't recall that. I -- 14 for the purpose of my report, I assumed that the 15 proof of claim had been made and filed. I figured 16 that this case wouldn't have gotten where it did if 17 there hadn't been an appropriate proof of claim 18 filed. 19 Q. Is the same true for answers regarding 20 Metco? 21 A. Well -- yeah. 22 Q. Did you assume -- my question is, did you 23 assume that they filed a proof of claim and 24 transmitted documents to USF&G? 25 A. Well, when I say "I assumed," as I went</p>

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<p style="text-align: right;">Page 52</p> <p>1 through this, I can't sit here and say that I recall 2 specifically any proof of claim. I guess the best 3 way to say it is, if I went back through the 4 documents to see if they were there, I'm sure I 5 would have noticed if there wasn't a proof of claim. 6 Q. And do you recall seeing -- I think you 7 answered this question, and I don't want to be 8 redundant. But you don't recall seeing any letter 9 from Shoreside or Metco transmitting documents to be 10 reviewed by USF&G? 11 A. As I sit here today, no, and I have to say 12 I didn't -- I didn't review those. 13 Q. Okay. And then the page following the 14 April 7, '98 letter in Exhibit 3 is a letter to 15 Nugget. And that deals with the Shoreside claim, 16 correct? 17 A. Yes, that's correct. 18 Q. Now, do you know whether, at page 2 of 19 Exhibit 3 -- 20 A. Okay. 21 Q. -- the Spencer rock claim referenced in 22 sentence one there, 1,426,707, do you know whether 23 that claim included Metco's claim? 24 A. As I sit here today, I don't recall. 25 Q. Page 7 of your report. The first</p>	<p style="text-align: right;">Page 54</p> <p>1 Nugget's position, there's no question, I believe, 2 that Nugget considered them to be sufficient. 3 The -- I think what you're getting at, and I don't 4 want to put words in your mouth, but I think what 5 you're getting at is, should they have been 6 sufficient for USF&G to simply rely on them. 7 Because my position has always been that 8 USF&G had a duty itself to independently 9 investigate, to not simply just take the word of 10 Nugget. 11 So I don't -- I don't mean to parse your 12 question, I just want to make sure that you and I 13 are on the same page. 14 Q. Just as far as status reports, in cases 15 you've dealt with, are there sufficient status 16 reports? That was my question. 17 A. I would say that that is a typical kind of 18 status report. That's right. 19 Q. Then we go to -- well, let's just ask this 20 general question. In cases that you represent 21 clients, do you always have clients review the 22 pleadings prior to filing? 23 A. If you're talking about pleadings meaning a 24 complaint or an answer, yes. 25 Q. Other pleadings.</p>
<p style="text-align: right;">Page 53</p> <p>1 paragraph, the second sentence -- before we do that. 2 I take it you and I can agree that there's nothing 3 unusual about a surety tendering a claim to the 4 principal -- 5 A. Correct. 6 Q. -- in defense of a claim, correct? 7 A. Uh-huh. 8 Q. Okay. The second and third sentence, do 9 you know whether pleadings that you did not review 10 were transmitted to the surety by Nugget's 11 attorney? 12 A. I don't know that. 13 Q. Do you know -- apparently you've seen a 14 status report, page 055 in Exhibit 2, that you've 15 never seen before today; is that correct? 16 A. That's the 55 through 67? 17 Q. Yeah. 18 A. Yes. 19 Q. Do you opine that the status reports which 20 you did see, which we went through in Exhibit 2 -- 21 A. Uh-huh. 22 Q. -- and the additional one, which you did 23 not see, in your opinion, were they sufficient or 24 should there have been more or less? 25 A. Let me answer the question carefully. From</p>	<p style="text-align: right;">Page 55</p> <p>1 A. You mean like motions or whatever? 2 Q. Yes. 3 A. No, no, not at all. I usually tell them 4 about motions that I file, you know, other than 5 something routine. And I -- but in terms of sitting 6 down and going over them point by point, no, I do 7 not. 8 Q. I'm going to do this just so we don't have 9 any further, hopefully, issue on exhibits. I'm 10 going to mark two more. One is your resume, which 11 was given to me by Mr. Callow. 12 A. No, that would be given to you by 13 Mr. Shamburek, I think. 14 Q. Excuse me, Mr. Shamburek. 15 MR. VIERGUTZ: Can we mark that 4. 16 (Exhibit 4 marked.) 17 BY MR. VIERGUTZ: 18 Q. Is that your resume, sir, Exhibit 4? 19 A. I believe so, yeah. 20 Q. And does that accurately depict your 21 experience and education and such? 22 A. Pretty much, uh-huh. 23 Q. Have you written any articles on surety 24 law? 25 A. I have not.</p>

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<p style="text-align: right;">Page 56</p> <p>1 Q. No publications of any type on surety?</p> <p>2 A. No, sir.</p> <p>3 Q. Okay. And then exhibit -- the last</p> <p>4 exhibit, 5 -- and I do this because of a statement</p> <p>5 that comes up in your report. And we'll get to it.</p> <p>6 But it talks about paragraph, I believe, 38,</p> <p>7 containing bad faith allegations in the complaints</p> <p>8 by the plaintiffs. And I just want to make sure</p> <p>9 we're talking about the same thing.</p> <p>10 So I'd ask these three complaints, North</p> <p>11 Star's amended complaint, Metco's amended complaint,</p> <p>12 and Shoreside's amended complaint be marked together</p> <p>13 as Exhibit 5.</p> <p>14 MR. SHAMBUREK: Herb, if we could just</p> <p>15 note, those are also the docket entries 406, 407,</p> <p>16 and 409?</p> <p>17 MR. VIERGUTZ: Yeah.</p> <p>18 MR. SHAMBUREK: Okay.</p> <p>19 (Exhibit 5 marked.)</p> <p>20 BY MR. VIERGUTZ:</p> <p>21 Q. Now, Exhibit 5, North Star's amended</p> <p>22 complaint.</p> <p>23 A. Yes.</p> <p>24 Q. If you could go to page 24. That's</p> <p>25 paragraph 38 that you're referencing, right?</p>	<p style="text-align: right;">Page 58</p> <p>1 And so a bad faith nonpayment is legitimate</p> <p>2 to say it incorporates failure to investigate.</p> <p>3 Q. Let's go to Shoreside's amended complaint,</p> <p>4 and that's page 19.</p> <p>5 A. All right. I am there.</p> <p>6 Q. At page 38.</p> <p>7 MR. SHAMBUREK: Paragraph 38.</p> <p>8 MR. VIERGUTZ: Paragraph 38, I'm sorry,</p> <p>9 page 19. Thanks.</p> <p>10 BY MR. VIERGUTZ:</p> <p>11 Q. There's a little additional verbiage on</p> <p>12 that paragraph, but there's no specific claim for</p> <p>13 bad faith failure to investigate, would you agree?</p> <p>14 It's again for bad faith nonpayment, nonsettlement,</p> <p>15 and/or refusal to discuss settlement.</p> <p>16 A. Yes, that's correct. The word -- the word</p> <p>17 bad faith failure to investigate, the words do not</p> <p>18 appear there. My answer is the same, though, about</p> <p>19 bad faith nonpayment. I think that, in the liberal</p> <p>20 rules of pleadings, that's...</p> <p>21 MR. VIERGUTZ: Can we go off for a second?</p> <p>22 (Off record)</p> <p>23 BY MR. VIERGUTZ:</p> <p>24 Q. Page 7 of your report, Exhibit 1,</p> <p>25 "Settlement Efforts." Was USF&G obligated to</p>
<p style="text-align: right;">Page 57</p> <p>1 A. Right.</p> <p>2 MR. SEWRIGHT: What page again?</p> <p>3 MR. VIERGUTZ: Page 24 of North Star's</p> <p>4 complaint.</p> <p>5 BY MR. VIERGUTZ:</p> <p>6 Q. Paragraph 38 says: "Upon information and</p> <p>7 belief, and subject to such further evidence as is</p> <p>8 disclosed by discovery, USF&G is also liable to</p> <p>9 North Star, under Alaska law, for the bad faith</p> <p>10 nonpayment, nonsettlement and/or refusal to discuss</p> <p>11 settlement of North Star's claim previously brought</p> <p>12 under the Miller Act herein, of which USF&G was</p> <p>13 notified."</p> <p>14 Where do you see a claim for bad faith</p> <p>15 failure to investigate in that paragraph?</p> <p>16 A. I don't.</p> <p>17 Q. Now, if we could go to Metco's amended --</p> <p>18 A. May I just say this?</p> <p>19 Q. Sure.</p> <p>20 A. When you say bad faith nonpayment, in order</p> <p>21 to make the payment, there has to be an</p> <p>22 investigation. So it's sort of a summary conclusion</p> <p>23 to say -- to say -- when you say there's a bad faith</p> <p>24 nonpayment, you can't make a payment, obviously,</p> <p>25 until you've reasonably investigated.</p>	<p style="text-align: right;">Page 59</p> <p>1 discuss settlement?</p> <p>2 A. Yes.</p> <p>3 Q. Why?</p> <p>4 A. Because they have -- their primary</p> <p>5 obligation is the obligees. And they need -- under</p> <p>6 Alaska law, they need to investigate and promptly</p> <p>7 settle claims. Legitimate claims. And so if they</p> <p>8 fail to promptly and adequately investigate,</p> <p>9 obviously they can't -- they can't settle, but if</p> <p>10 they -- they can't get around the settlement duty by</p> <p>11 failing to properly investigate.</p> <p>12 Q. Could you and I agree that if you have a</p> <p>13 client and I sue you, you don't have any obligation</p> <p>14 to participate in a settlement conference?</p> <p>15 A. If I have a client and you sue my client?</p> <p>16 Q. Uh-huh. You don't have to settle a case</p> <p>17 with me?</p> <p>18 A. If it's not an insurance matter, absolutely</p> <p>19 not.</p> <p>20 Q. But if it's an insurance case and I sue</p> <p>21 you, and your client is a carrier, you have an</p> <p>22 obligation to attend a settlement conference.</p> <p>23 MR. SEWRIGHT: Object to the form.</p> <p>24 THE WITNESS: Well, no. I mean, do I as</p> <p>25 the lawyer for the carrier have an obligation to</p>

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<p style="text-align: right;">Page 60</p> <p>1 attend the settlement conference? I suppose, if 2 there's a settlement conference and it's my client, 3 I have a legal obligation. 4 BY MR. VIERGUTZ: 5 Q. But does your client have the option to 6 say, no, I don't want to settle and I don't want to 7 go to a settlement conference and we're going to 8 trial? 9 A. In the insurance context of what we're -- 10 let's be specific. Are we talking about in the 11 USF&G circumstance? 12 Q. And it's not insurance, it's surety. 13 A. Okay. All right. Surety. Okay. 14 In that circumstance, I believe that a 15 surety is bound to the same rules as an insurance 16 company. I just think it's a subset of insurance 17 companies. And I think that they have a duty to 18 investigate and promptly settle claims under 19 Title 36, and also under -- you know, I've been 20 saying Title 36, and I should be saying -- it's 21 21.36.125, and so anywhere I've been saying Title 36 22 because I -- just my notations I write 36 and then 23 125, but it's really Title 21. 24 MR. SEWRIGHT: So you mean Chapter 36. 25 THE WITNESS: Yes, that's right. Yes,</p>	<p style="text-align: right;">Page 62</p> <p>1 MR. SEWRIGHT: Never communicated to us. 2 BY MR. VIERGUTZ: 3 Q. Do you know who Steven Schoenhaar is in 4 paragraph 2 under "Settlement Efforts" on page 2 of 5 Exhibit 1? 6 A. I just know that he's an employee of 7 USF&G. 8 Q. You don't know what his job description is 9 or where he is? 10 A. Well, the answer to that is, as I sit here 11 no, today, I can't remember. I mean, if he's a -- 12 if he's counsel or an adjuster, I can't remember. 13 Q. And it is not bad faith to refuse to settle 14 if the surety has a good faith basis to believe that 15 the claim is without merit? 16 A. That's correct. 17 And I want to make sure that I'm clear with 18 you on this. By that, I don't want you to take it 19 that I am saying that the -- that USF&G can simply 20 rely on the principal to provide the investigation 21 and the analysis of the claim. USF&G has an 22 independent duty, and only by fulfilling that duty 23 can it end up with a good faith basis for making 24 those decisions. 25 Q. And page 8, under "Later Correspondence</p>
<p style="text-align: right;">Page 61</p> <p>1 that's right. 2 So it's Title 31, Chapter 36.125. And 3 under, I think it's 3 AAC 030 point whatever, I 4 can't remember the 226, that -- there are -- there 5 are duties that insurance companies have to promptly 6 settle claims. 7 BY MR. VIERGUTZ: 8 Q. If they have merit? 9 A. Yes, that's correct. 10 Q. And if your client, the surety, says these 11 claims do not have merit, or they have questionable 12 merit, can they then refuse to settle the claims? 13 A. If they have -- if they have a good faith 14 basis for believing that the claims have no merit, 15 absolutely they can refuse to settle the case. 16 Q. You discuss in your report at page 7 at 17 sentence 3: I understand that prior to the 18 settlement conference, Nugget offered to settle 19 North Star's claim for 20,000, Shoreside claims for 20 5,000, and Metco's claim for 10,000. 21 Were you made aware that Nugget offered to 22 settle the three plaintiffs' claims at the 23 settlement conference for \$120,000? 24 A. I don't recall that specific number, that's 25 correct.</p>	<p style="text-align: right;">Page 63</p> <p>1 Between USF&G and Oles Morrison." 2 A. Yes. 3 Q. The second sentence says, "There is no 4 evidence any copies of those requested documents 5 were ever mailed" -- I think you omitted the "M." 6 A. Yes, I saw that and actually I meant to 7 correct that. 8 Q. Sure. -- "to Mr. Schoenhaar or anyone else 9 at USF&G," right? 10 A. Yes. And I will amend that by saying there 11 is no evidence that I was aware. 12 Q. And those documents are the appeal briefs 13 and such that you're speaking of? 14 A. Yes. I saw no evidence that those were 15 reviewed. 16 Q. And are you relying on what your counsel 17 told you and what your counsel provided to you to 18 come to that conclusion? 19 A. Well, I'm -- what my counsel -- or my 20 counsel. What the people who hired me provided to 21 me, that's what I'm relying on. I don't know that 22 they specifically -- I wouldn't -- if they said 23 there is no evidence, I certainly would have looked 24 to see if there was any evidence. And if they 25 withheld it, I suppose I would -- I took in good</p>

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<p>1 information it had regarding the three claims. If 2 USF&G did anything, there is no record of what it 3 did." 4 Isn't that disputed by Exhibit 3, the 5 letters, pages 4, 5, 6? 6 A. Exhibit 3, pages 4, 5, 6, we're talking 7 about -- 8 Q. Any of those claims. LaPore's claims, 9 Chugach Rock's claim, North Star's claim, 10 Shoreside's claim. Aren't they writing the 11 claimants asking for additional information and 12 trying to get more from them to be knowledgeable? 13 A. Well, let me say this. The allegations 14 said they never did anything with the information it 15 had regarding the three claims, that's a little bit 16 different than -- but anyway, I understand what 17 you're saying. 18 Certainly those letters refer to the 19 claims, but I think the allegation said they never 20 did anything with the information that they 21 obtained. 22 Q. The information that had been provided by 23 the claimants resulted in USF&G denying the claims; 24 isn't that correct? 25 MR. SEWRIGHT: Object to the form of the</p>	<p>1 from the obligees, that's correct. 2 BY MR. VIERGUTZ: 3 Q. And then the next paragraph, or the third 4 one on page 10 under that heading, says, "There were 5 a number of settlement opportunities in this case. 6 The three claimants each expended resources 7 preparing settlement offers in earnest throughout 8 this litigation which appear never to have been 9 considered in good faith by the defendants." 10 What evidence are you aware of that that 11 statement is accurate? 12 A. What evidence am I aware of? 13 Q. Uh-huh. Yes. 14 A. I'm aware of representations made to me by 15 Mr. Shamburek and Mr. Sewright. I don't recall 16 actually preparing the settlement -- or reviewing 17 any settlement offers in this case. 18 Q. Would you agree it's standard practice in 19 the industry for a surety to require general 20 agreement of indemnity to be signed by the 21 indemnitors? 22 A. I can't speak to whether it is standard 23 practice. It's not uncommon. That's my 24 understanding. 25 Q. Page 11 under "Conclusion." I don't</p>
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<p>1 question. 2 THE WITNESS: Well, the answer is, yes, 3 USF&G denied the claims. 4 BY MR. VIERGUTZ: 5 Q. And in those letters requesting further 6 information from the claimants, was it not the 7 obligation of the claimants then to provide 8 additional information? 9 MR. SEWRIGHT: Object to the form of the 10 question. And also out of context, Mr. Viergutz, 11 from some -- 12 MR. VIERGUTZ: You object to the form, 13 period. 14 MR. SEWRIGHT: -- of these letters there 15 was a lawsuit filed. 16 Object to the form. 17 MR. VIERGUTZ: Just object to the form. 18 The running objection is unnecessary. 19 THE WITNESS: Let's -- may I have the 20 question again, please. 21 (Question read back.) 22 MR. SEWRIGHT: And the objection is to the 23 form. 24 THE WITNESS: When -- an insurer or a 25 surety has a right to seek reasonable information</p>	<p>1 understand the third sentence where it says, 2 "Neither Nugget nor USF&G contested those 3 assertions." I don't understand what the Ninth 4 Circuit appeal was all about if those assertions 5 weren't contested. Can you tell me what you're 6 speaking to? 7 A. Just give me a moment here, I want to just 8 put this... 9 (Reviews document.) 10 MR. VIERGUTZ: Can we go off for just a 11 second? 12 (Off record) 13 THE WITNESS: Let's go back on record. 14 Your question is, what was the Ninth 15 Circuit opinion all about? 16 BY MR. VIERGUTZ: 17 Q. Yeah, what is that appeal all about? 18 A. Well, are you talking about the one -- the 19 Ninth Circuit appeal referred to where the panel 20 came out with a decision in March of 2005? 21 Q. The most recent one, yeah. 22 MR. SEWRIGHT: I'm going to object to the 23 form of the question, to that line of questioning. 24 THE WITNESS: Well, my understanding is 25 that the Ninth Circuit opinion, the one from</p>

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<p>1 marked?</p> <p>2 MR. SEWRIGHT: Are we off the record?</p> <p>3 MR. VIERGUTZ: Yeah, go off the record.</p> <p>4 (Off record)</p> <p>5 BY MR. VIERGUTZ:</p> <p>6 Q. The last complaint, amended complaint in</p> <p>7 Exhibit 5, is the Metco amended complaint --</p> <p>8 A. Yes.</p> <p>9 Q. -- dated August 31, '05. And paragraph 38</p> <p>10 at that --</p> <p>11 A. I'm there.</p> <p>12 Q. -- amended complaint --</p> <p>13 A. Page 18.</p> <p>14 Q. Yeah. That's the same identical language</p> <p>15 as the Shoreside amended complaint at paragraph 38,</p> <p>16 correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Now, back to Exhibit 1.</p> <p>19 A. Yes.</p> <p>20 Q. In that first paragraph of page 12.</p> <p>21 A. Yes.</p> <p>22 Q. The second sentence there, it says, "The</p> <p>23 litigation tactics of Nugget and USF&G have</p> <p>24 reportedly escalated the costs unreasonably."</p> <p>25 A. Yes.</p>	<p>1 reference to the notice in it.</p> <p>2 Well, I don't know right now, looking back</p> <p>3 through the report, I don't want to waste a lot of</p> <p>4 time, but that's my understanding, is that this</p> <p>5 is -- they were litigating whether the notice of the</p> <p>6 claim was adequate, and...</p> <p>7 Q. Okay.</p> <p>8 A. Yeah.</p> <p>9 Q. Now, the paragraph right under that --</p> <p>10 A. Yes.</p> <p>11 Q. -- one sentence, it says, "A strategy of</p> <p>12 trying to economically overwhelm an intended</p> <p>13 contract beneficiary that asserts a valid claim by</p> <p>14 trying to force that party into submission by</p> <p>15 litigating frivolous issues and defenses that cause</p> <p>16 the claimants to incur inordinate legal fees is bad</p> <p>17 faith."</p> <p>18 A. Yes.</p> <p>19 Q. That presupposes that the contention has</p> <p>20 merit, correct?</p> <p>21 A. Yes. That's why it says "asserts a valid</p> <p>22 claim," yes.</p> <p>23 Q. And that's a question of fact, isn't it?</p> <p>24 A. It is a question of fact.</p> <p>25 Q. You have not served as an expert witness</p>
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<p>1 Q. Is that based on representations made to</p> <p>2 you by Mr. Shamburek and Sewright?</p> <p>3 A. Yes.</p> <p>4 Q. Then the last sentence, "Nugget and USF&G</p> <p>5 have apparently committed enormous sums to litigate</p> <p>6 this case which are far out of line with the total</p> <p>7 amount in controversy." And that would be equally</p> <p>8 true for the claimants, correct?</p> <p>9 A. Yes, that's correct.</p> <p>10 Q. And then the next paragraph -- my question</p> <p>11 simply is the first sentence, it says, "...whether</p> <p>12 the notice discussed above was accurate." I'm</p> <p>13 wondering what notice are we talking about? I</p> <p>14 couldn't follow that.</p> <p>15 A. Where are you now?</p> <p>16 Q. The second paragraph where --</p> <p>17 A. Yes.</p> <p>18 Q. -- it starts "Shoreside contends."</p> <p>19 A. Yes.</p> <p>20 Q. And toward the end of that sentence it</p> <p>21 says, "...and whether the notice discussed above was</p> <p>22 adequate."</p> <p>23 A. (Reviews document.)</p> <p>24 I wonder if this is an editing thing. Let</p> <p>25 me just take a moment and find where there's a</p>	<p>1 regarding bad faith practices of a surety or</p> <p>2 insured, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Have you ever served as an expert witness</p> <p>5 in any case?</p> <p>6 A. I'm trying to think.</p> <p>7 I've testified a number of times; I don't</p> <p>8 know whether I have been asked to testify as an</p> <p>9 expert. I was -- I testified in the Weiford case.</p> <p>10 I don't -- I don't believe that I've been asked to</p> <p>11 testify as an expert previously.</p> <p>12 Q. Do you know Mr. Shamburek socially?</p> <p>13 A. Yes, somewhat, uh-huh.</p> <p>14 Q. How long have you known him?</p> <p>15 A. Oh, I would say probably 20 years. I got</p> <p>16 to know him when he was practicing with Randy</p> <p>17 Farleigh, when it was Farleigh & Shamburek. And</p> <p>18 actually, he was on the other side of a case that I</p> <p>19 had briefly. But I had met him professionally from</p> <p>20 Mr. Shamburek -- I mean, Mr. Farleigh.</p> <p>21 We had this case together, or where he was</p> <p>22 on the other side, and he now has -- maintains an</p> <p>23 office down the hall, office sharing, from me. So I</p> <p>24 see him fairly regularly when he stops into that</p> <p>25 office.</p>

24 (Pages 84 to 87)

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North Star Terminal & Stevedoring, et al. v. Nugget Construction, Inc., et al.

A98-009 (HRH)

United States District Court for the District of Alaska

Expert Report of William Grant Callow

Introduction

I understand that this case involves a construction project undertaken by the United States Army Corps of Engineers for repair and revetment work for the Homer spit in Homer, Alaska ("Homer Project") from about March until about October, 1997. Nugget Construction, Inc. was the general contractor. United States Fidelity and Guaranty ("USF&G") provided the payment and performance bonds required to undertake work on federal projects pursuant to the Miller Act. Spencer Rock Products, Inc. entered into a contract with Nugget to provide the rock for the Homer Project. North Star Terminal and Stevedoring provided stevedoring work (about \$125,000), Metco, Inc. provided other labor (about \$34,000), and Shoreside Petroleum, Inc d/b/a Marathon Fuel provided fuel and lube (about \$53,000) for the Homer Project. A lawsuit was filed in early January, 1998 by North Star in the United States District Court for the District of Alaska and joined by Shoreside and Metco. There have been two major summary judgment decisions by the district judge and two appeals to the Ninth Circuit Court of Appeals and remands. The three claimants filed amended complaints on or about August 31, 2005 asserting among other claims bad faith causes of action against USF&G. I have been requested to opine as to the treatment of the claims by USF&G. I reviewed documents provided to me by the attorneys for the claimants and discussed this case with them.

Correspondence From The Claimants and the Corps of Engineers
To Nugget Construction and USF&G

In a letter from the Corps of Engineers dated August 6, 1997 to Nugget Construction, the Corps states in pertinent part:

SUBJECT: Letter from METCO, Incorporated, Contract
DACW85-96-C-0020, Homer Spit Repair and Extension,
Homer, Alaska

Attached is a letter we received from METCO, Incorporated, dated July 31, 1997, regarding non-payment for work that they have conducted for the



above project. METCO states that they have not been paid for loading rock from the rail cars to the barges in Seward.

. . . .

METCO's letter claims that Spencer Quarry has not paid them because Spencer Quarry has not received payment from Nugget Construction.

. . . .

We remind you that under Contract Clause I.55, Payments - Under Fixed-Price Construction Contracts, Paragraph c.3 states: "This request for progress payment does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract."

(RRO/33; Nugget 001583 - 001586). The letter attaches a copy of the letter from Metco, Inc. dated July 31, 1997 demanding payment.

In a letter from the Corps of Engineers dated August 21, 1997 to Nugget Construction, the Corps states in pertinent part:

SUBJECT: Letter from Northern Stevedoring and Handling Corporation, Contract DACW85-96-C-0020, Homer Spit Repair and Extension, Homer, Alaska

. . . .

Attached is a letter we received from Northern Stevedoring & Handling Corporation regarding work that they have conducted for the above project which they have not received payments. Northern Stevedoring claims that they have not been paid for loading five barges in Seward.

. . . .

We request an immediate explanation of why Northern Stevedoring has not been paid for the services that they have provided to the Homer project.

We remind you that under Contract Clause I.55, Payments Under Fixed-Price Construction Contracts, you are not to request for progress payments that which you intend to withhold from a subcontractor or supplier.

(RRO/38; Nugget 001563 - 001565). The letter attaches a copy of the letter from Northern Stevedoring and Handling dated August 4, 1997 demanding payment.

In a letter from the Corps of Engineers dated August 26, 1997 to Nugget Construction, the Corps states in pertinent part:

SUBJECT: Spencer Quarry, Contract DACW85-96-C-0020,
Homer Spit Repair and Extension, Homer, Alaska

. . . .

We acknowledge receipt of Serial Letter 611-19, dated August 6, 1997 and Serial Letter 611-21, dated August 11, 1997. We do not necessarily agree that Spencer Rock Products is only a "vendor" for Miller Act purposes.

Based on the supporting costs that you outlined in Serial Letter 611-21, it appears that Nugget Construction has assumed full responsibility for operations at Spencer Quarry for the subject project. Therefore, as primary operator at Spencer Quarry, we believe Nugget Construction is responsible for prompt payment to suppliers and subcontractors who contracted with Spencer Rock Products on this project.

We request that you clarify what support and project management services Nugget Construction provided to Spencer Rock Products to account for the support cost that you have shown in Serial Letter 611-21. Further, please provide information showing what work, if any, has been performed by Spencer Rock Products under its subcontract with Nugget Construction.

(RRO/40; Nugget 001561). The letter states that it was courtesy copied to "United States Fidelity and Guarantee Co., Attn: Bill Wells, 4220 B Street, Anchorage, AK 99503."

In a letter from the Corps of Engineers dated September 9, 1997 to Nugget Construction, the Corps states in pertinent part:

SUBJECT: Letter from Northern Stevedoring and Handling Corporation [Northern Stevedoring is scratched out and Shoreside Petroleum handwritten on the copy], Contract DACW85-96-C-0020, Homer Spit Repair and Extension, Homer, Alaska

. . . .

Attached is a letter we received from Shoreside Petroleum, Incorporated, dated August 28, 1997. This letter is regarding services that they have provided for the above project for which they have not received payment.

. . . .

We request an immediate explanation of why Shoreside Petroleum Incorporated has not been paid for the services that they have provided to the Homer project.

(RRO/44; Nugget 001554 - 001555). The letter attaches a copy of the letter from Shoreside Petroleum dated August 28, 1997 demanding payment.

Early Correspondence

A handwritten note from a person identified as "Jim Ferguson" of the Anchorage office of the brokerage firm Willis Corroon dated August 28, 1997 to Bill Wells of USF&G states: "Nugget is handling + will continue to handle to keep us clean + out of this. Thanks. [signed Jim]." (WEL000051). A facsimile transmission from James L. Ferguson, Senior Vice President, Alaska Surety Manager of Willis Corroon Corporation of Anchorage dated September 2, 1997 to Bill Wells with USF&G re: Nugget/Spencer Quarry Northern Stevedoring states in handwriting: "Bill, We will get back up from Nugget + a letter from their Attorney. Spencer Rock Products was a Vender Not a Sub + as I said Nugget is handling this. Thanks. [signed Jim]." (WEL000056). Another note from Jim Ferguson with Willis Corroon in Anchorage dated September 10, 1997 to Bill Wells with USF&G states: "Again - Nugget is handling - We are to get a letter from his attorney this week. Thanks. [signed Jim]." (WEL000060).

Attorney Michael W. Sewright, counsel for Northern Stevedoring and Terminal, sent a letter to Nugget Construction dated August 29, 1997 with a courtesy copy to "U.S. Fidelity & Guaranty Co, 4220 B Street, Anchorage, AK 99503" referencing the August 4, 1997 letter from Northern Stevedoring and again demanding payment. (Unmarked document). Attorney John Lukjanowicz of Oles, Morrison & Rinker, counsel for Nugget Construction, Inc., sent a letter to

Mr. Sewright dated September 12, 1997 discussing his letter dated August 29, 1997 regarding the North Star Terminal claim. (WEL000064). Mr. Sewright responded by letter dated September 19, 1997 and noted among other observations that Nugget had a direct relationship with Northern Stevedoring. (Unmarked document). Robert LaPore with Spencer Rock Products discussed the problems with Nugget Construction's operation of the quarry in detail in a letter dated October 20, 1997 and stated that at the end of his letter that it was also sent to the "Bonding Co." (Unmarked document). Shoreside also noted that it had a direct relationship with Nugget Construction. (Shoreside's Third Supplemental Discovery Response, p. 2).

A copy of an e-mail from Jane Poling employed by USF&G dated "10/24/97 at 05:27 PM" to "Bill Wells/USFG" with a courtesy copy to "Bryan Martin/USFG, John Phinney/USFG" and with the subject line referring to the "Principal: Nugget Construction, Inc.," states:

Please be advised that I received a claim from underwriting on the above principal. At this time there are the following claims:

- (1) Spencer Rock - \$1,426,707.84
- (2) Northern Stevedoring - \$124,724.98
- (3) Chugach Rock Corporation - \$86,444.00
- (4) Shoreside d/b/a Marathon Fuel - \$53,062.00
- (5) Metco – undisclosed amount

At this time, I would appreciate it if you could provide me with any information regarding whether this is an on-going account, **because based on the information available to me at this time some of the defenses of the principal may be questionable.** Also, please provide me with any status reports if you have any, and I will keep you advised of this matter as it progresses.

(USF&G 001013; Emphasis added). USF&G acknowledged the questionable defenses of Nugget at least by October, 1997.

I understand that Nugget Construction and Spencer Rock Products entered into a Support Agreement dated April 23, 1997. In the Decision of the Ninth Circuit Court of Appeals dated March 3, 2005, the panel stated in pertinent part:

On the record before us, the appellees have presented sufficient evidence to create a material issue of fact as to subterfuge or collusion. The evidence, although not conclusive, tends to show that Nugget secretly converted Spencer Rock into a strawman in its ongoing dealings with the appellees. The support agreement with Spencer Rock on its face purports to insulate Nugget from Miller Act liability, yet Nugget directed Spencer Rock to conceal the terms of this agreement and keep secret Nugget's arrangements with Spencer Rock relating to the project. Nugget also began performing some of Spencer Rock's functions at the quarry and interacted directly with some of the appellees – the extent to which remains in dispute.

(Decision dated March 3, 2005 at docket entry no. 383 at p. 6). Judge Holland previously found: "None of the parties that Spencer contracted with for goods and services (North Star, Shoreside, or Metco) were made aware of the support agreement because Nugget insisted that Spencer not inform those parties of it." (Order dated August 30, 2002 at docket entry no. 310 at p. 6). USF&G knew or should have known that Nugget was attempting to prevent this evidence from being disclosed as early as September or October, 1997 and should have undertaken greater scrutiny of Nugget's representations to it.

Proofs of Claim

Ms. Poling of USF&G sent a letter dated October 28, 1997 to Robert LaPore, President of Spencer Rock Products, Inc. acknowledging the claim for \$1,426,707.84. (USF&G 001637). Ms. Poling sent a letter dated January 14, 1998 to Robert LaPore, President of Spencer Rock Products, Inc. acknowledging that Spencer provided a proof of claim and supporting documents but denying the claim. (USF&G 001636).

Shoreside Petroleum, Inc. submitted a letter to Ms. Poling and a formal USF&G Proof of Claim dated December 16, 1997 with supporting documents to USF&G (Nugget 009113 - 009152). Ms. Poling sent a letter to Nugget dated January 5, 1998 asking Nugget to explain its position in the matter. (Nugget 009112). There is no response from Nugget in the materials I reviewed. USF&G does not appear to have undertaken any more investigation of the claim or to have sought any additional information from Shoreside.

The records do not indicate whether USF&G ever asked Metco, Inc. to provide a Proof of Claim even though USF&G was aware that Metco asserted a claim as indicated in the e-mail note from Ms. Poling. (USF&G 001013).

Correspondence from Oles, Morrison

Attorney Lukjanowicz of Oles, Morrison & Rinker sent two letters to Ms. Poling dated December 16 and 17, 1997 discussing the North Star Terminal and Stevedoring claim and the Chugach Rock Corporation claims, respectively. (USF&G unmarked document). Mr. Lukjanowicz also sent a letter to Ms. Poling dated February 17, 1998 discussing the Chugach Rock Corporation claim again. (USF&G 001413 - 001415). There does not appear ever to have been a discussion of the possible liability for the claims of Shoreside Petroleum, Inc. and/or Metco, Inc., although I understand that their claims, and the defenses to them, are similar to the ones involving North Star Terminal and Stevedoring. The three claimants contend that the one letter that relates to their claims does not completely and candidly discuss the exposure of Nugget Construction and USF&G to the claims of the three claimants. USF&G does not appear to have sought additional information from these three claimants. Instead, USF&G simply tendered its defense to Nugget Construction in a letter dated February 13, 1998. (Nugget 008466 - 008467).

Nugget Construction accepted USF&G's tender of defense in February, 1998 in accordance with a contract provision that states in pertinent part:

Should you agree to accept the surety's tender of defense you will be required to provide a copy of all pleadings. Those pleadings filed on behalf of the surety must be reviewed and approved by the surety prior to such filing. We also request that your attorney provide us with regular status reports concerning the litigation. It is also a condition of this tender of defense that we have the right with reasonable notice, to have full access to all of your files concerning this matter. We also specifically reserve the right to revoke the tender of this defense at any time and for any reason.

(USF&G 001535). In the records I reviewed, there are some facsimile transmittal sheets, but not documents indicating that there was any review and/or written approval of pleadings by USF&G prior to their filing. I also have not seen any evidence to suggest that USF&G ever revoked the tender of defense.

Settlement Efforts

Shoreside Petroleum filed a motion seeking a settlement conference on April 6, 1998 at docket entry no. 24. North Star Terminal and Stevedoring filed a joinder on April 9, 1998 at docket entry no. 25. Neither Nugget nor USF&G joined the motion or pursued the opportunity to discuss settlement. The court denied the motion on April 14, 1998 at docket entry no. 27. Shoreside Petroleum filed a renewed motion seeking a settlement conference on June 18, 1998 at docket entry no. 42. Spencer Rock filed an opposition on June 29, 1998 at docket entry no. 44. Shoreside filed a reply on July 1, 1998 at docket entry no. 47. The court denied the motion on July 1, 1998 at docket entry no. 46. North Star filed a Joinder in the renewed motion for a settlement conference at docket entry no. 48. USF&G disregarded another opportunity to discuss settlement of the claims.

Steven W. Schoenhaar of USF&G sent a letter dated November 18, 1998 to Mr. Lukjanowicz acknowledging a voicemail message from Mr. Schoenhaar that Nugget Construction was unable to settle the claims of the three claimants and requesting a copy of the settlement offers made to each of these three (3) entities. (USF&G unmarked document). There is nothing in the file to indicate that Nugget made any settlement offers or otherwise responded to this request by Mr. Schoenhaar. The three claimants contend that Nugget did not make any settlement offers at this time.

In September, 1999, the parties were encouraged by the Court to explore settlement as noted by the Order at docket entry no. 139. I understand that the three claimants carefully prepared settlement offers and presented them to Nugget. I understand that Nugget rejected all of them and made no counteroffers.

The Court ordered a settlement conference for on June 7, 2005 as indicated by the Order at docket entry no. 385. Another judge conducted the settlement conference as indicated by the Order at docket entry no. 386. I understand that prior to the settlement conference, Nugget offered to settle North Star's claim for \$20,000, Shoreside's claim for \$5,000, and Metco's claim for \$10,000. The three claimants made higher settlement offers for the principal sums with interest and attorney's fees. The settlement conference was terminated because the settlement

judge concluded that the parties were too far apart to reach a resolution as indicated by the Order at docket entry no. 388.

Later Correspondence Between USF&G And Oles, Morrison

Mr. Schoenhaar sent a letter dated November 15, 2002 to attorney William K. Renno of Oles Morrison Rinker & Baker requesting copies of all briefs filed by any party in connection with the appeal. (Unmarked document). There is no evidence any copies of those requested documents were ever ailed to Mr. Schoenhaar or anyone else at UDF&G.

Janice S. Smith with USF&G sent a letter dated March 24, 2005 to attorney Traeger Machetanz of Oles Morrison Rinker & Baker requesting in pertinent part: "Please provide a brief history of the case as well as a written status of the referenced suit. Please provide me with all relevant dates set, including, but not limited to, trial dates, hearing dates, arbitration/mediation, etc. Also, please provide me with a written update of the current positions of the parties to this action, including the most current settlement demands made, if any." (USF&G unmarked document). Attorney Christine V. Williams of Oles Morrison Rinker & Baker sent a three page letter to Ms. Smith dated March 29, 2005 providing some information concerning the status of the case. (USF&G unmarked document). In Ms. William's letter, the principal amounts of two of the claims (Shoreside and Metco) were understated, the possible exposure of Nugget and USF&G was not even acknowledged, and there was no discussion of settlement offers by the parties. This appears to be the only discussion of the case of any substance in writing since the first complaint was filed in January, 1998 by North Star.

Claimaints' Challenges To USF&G's Actions And Inactions

All three claimants assert causes of action for bad faith against UFS&G in paragraph 38 of the three Amended Complaints at docket entry numbers 406, 407, and 409. In Shoreside's Third Supplemental Discovery Responses, Shoreside states:

USF&G knew or should have known that Nugget was requesting progress payments from the United States Government through the Corps of Engineers in violation of Nugget's contract with the Corps and after written reminder of its obligations by the Corps of Engineers. The Corps expressly stated that Nugget could not request progress payments if it was withholding any payments to suppliers and subcontractors. The obligation to pay did not depend on the narrower definitions of suppliers and subcontractors in the Miller Act.

USF&G knew or should have known that Nugget was secretly structuring its transactions so that Nugget could deceive the Corps of Engineers and the three claimants regarding the actual relationship between

and obligations of Nugget and Spencer Rock. USF&G should have inquired into the reasons that Nugget was engaging in this deception and subterfuge.

USF&G knew or should have known that Oles, Morrison may have been involved in structuring the transactions to create a straw man relationship with Spencer Rock and a hollow shell constituting a subterfuge under the Miller Act in order to seek to excuse Nugget's willful non-payment to the three claimants.

USF&G appears to have relied exclusively or primarily on representations from Oles, Morrison, Nugget's attorneys, regarding the facts and the defenses of Nugget and of USF&G. USF&G should have undertaken its own independent investigation of the facts and law and its own analysis and handling of the claims.

After the lawsuits were filed, Nugget filed a motion to declare that this federal project was not a federal project. USF&G did not file an opposition or any response to the Nugget motion. USF&G provided Miller Act bonding for a federal project and should have filed an opposition or response to the Nugget motion because Nugget's motion was contrary to the unchallenged facts including the written statements of the Corps of Engineers. The claimants expended additional attorney's fees to challenge and defeat the unfounded Nugget motion.

The decision by the District Judge in this case finding that Spencer Rock Products was a subcontractor to Nugget under the Miller Act was and is a correct interpretation of the relevant decisions of the United States Supreme Court. USF&G also agreed or should have agreed that the decision was correct as a matter of law based on the same decisions. However, USF&G joined with Nugget and appealed the decision of the District Court. Nugget's election to appeal was a shrewd gamble that proved fortuitous for Nugget based on the brief, unpublished decision of the Ninth Circuit panel citing no Supreme Court authority. The decision of the Ninth Circuit is in conflict with

settled Supreme Court authority. There were and are substantial costs to the claimants to defend the appeal and to continue this litigation after remand.

(Shoreside's Third Supplemental Discovery Responses, pp. 2 - 4). In Metco's Supplemental Discovery Responses, Metco states:

USF&G's records indicate that it never did anything with the information it had regarding the three claims. If USF&G did anything, there is no record of what it did.

USF&G may have made demands on Nugget to review the claims candidly and in good faith. If it did, it has not produced any supporting documents.

There were a number of settlement opportunities in this case. The three claimants each expended resources preparing settlement offers in earnest throughout this litigation which appear never to have been considered in good faith by the defendants. In any other case like this one that spanned eight years, one or more of the defendants individually or jointly should have made at least a reasonable settlement offer or offers. In the alternative, USF&G should have made an offer in good faith or required Nugget to make an offer in good faith.

When an insurance company provides coverage for an automobile owner, it is committing to defend and indemnify claims by the entire world against the insured subject to terms and conditions of the policy. In this case, USF&G provided a payment bond that answered the claims of only a small number of known claimants. USF&G was aware of the three claimants and could have required Nugget to satisfy the claims asserted by the three claimants. USF&G appears to have obtained personal guaranties and other indemnity guaranties from John Terwilliger and Nugget and thus has always been able to protect itself.

The Alaska Supreme Court discusses some of the duties of a surety in Loyal Order of Moose, Lodge 1392 v. International Fidelity Ins. Co., 797 P.2d 622 (Alaska 1990). State law causes of action for bad faith are

not preempted by the Miller Act. K-W Industries v. National Surety Corp., 855 F.2d 640 (9th Cir. 1988). USF&G had and has responsibilities as set forth by law and pursuant to its payment bond provided for the use and benefit of the claimants. The duty of good faith attaches under Alaska law and contemplates awards of compensatory and punitive damages when the duty is breached.

Conclusion

After it became aware of these three claims in September, 1997, USF&G was on notice that both it and Nugget faced substantial exposure. USF&G was on notice that the three claimants had performed services and provided goods for the use and benefit of the bonded Homer Project. Neither Nugget nor USF&G contested those assertions, and the district court found that the claimants had in fact performed services and provided goods in a timely and conforming manner for the use and benefit of the Homer Project.

The three claimants performed services and provided goods in reliance on the protection afforded by the Miller Act payment bond. USF&G knew or should have known that Nugget was not being candid with the Corps of Engineers and the claimants in particular when Nugget sought to conceal the Support Agreement dated April 23, 1997. USF&G knew or should have known that the Support Agreement and subsequent activities changed the legal relationship of the parties.

USF&G owed a duty to the three claimants to investigate the claims with due care. USF&G breached that duty. USF&G tendered defense of the claims to Nugget without first fulfilling its duty to undertake a reasonable investigation of the claims. After acceptance of the tender by Nugget, USF&G appears to have done little if anything to review and approve pleadings before they were filed or to monitor the case. USF&G appears to have done little if anything to discuss settlement of the claims. Figuratively speaking, USF&G allowed the fox into the hen house and then abandoned the three hens it had a duty reasonably to protect.

USF&G has a right to defend against invalid or reasonably questionable claims and a right not to settle such claims. However, USF&G must fairly balance these rights with its duties to the three claimants who are its intended contract beneficiaries. The three claimants relied on the fact that the Homer Project was a bonded project and continue to seek the coverage reasonably expected by that protection. USF&G acted in bad faith by failing to investigate the claims with reasonable care, by failing to engage seriously in settlement efforts, and by failing to monitor and actively assert the rights it had to participate in the case.

Litigating a case that involves less than \$100,000 is often uneconomical for all involved. A party can defend against any claim, but committing a disproportionate sum to challenge well-founded claims is problematic and usually economically irrational. A party that commits resources that are disproportionate to the amount in controversy and appeals every unfavorable trial court ruling, no matter how clearly that ruling may be based on evidence or within the ambit

of the reasonable discretion accorded the trial court, employs a strategy that seeks to win not upon the merits but by economic coercion. I understand that the cost of bringing and maintaining the claims in this case has been staggering. The litigation tactics of Nugget and USF&G have reportedly escalated the costs unreasonably. Nugget and USF&G have apparently committed enormous sums to litigate this case which are far out of line with the total amount in controversy.

Shoreside contends that Nugget drove up the costs of litigation by raising and litigating frivolous issues, such as whether this federal project is a federal project and whether the notice discussed above was adequate. The record reveals that Nugget and USF&G have enlisted at least eight (8) lawyers in this eight (8) year defense campaign.

A strategy of trying to economically overwhelm an intended contract beneficiary that asserts a valid claim by trying to force that party into submission by litigating frivolous issues and defenses that cause the claimants to incur inordinate legal fees is bad faith.

This report is subject to further amendment as other discovery documents and information are brought to my attention.


Other Testimony

I have not served as an expert witness regarding bad faith practices of an insured or surety. However, I have undertaken many cases involving conduct and/or claims of bad faith against insurers in the past twenty (20) years. I also have taught a continuing legal education course on the subject of discovering and proving insurance bad faith.

Compensation

I am charging my hourly rate of \$200 per hour.

Dated this 14th day of February, 2006 at Anchorage, Alaska.



William Grant Callow

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February 8, 2006

William Grant Callow
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Anchorage, Alaska 99501

Dear Grant:

I am enclosing a number of documents for your review. The Docket Sheet is attached and the pleadings include:

Pleadings and Orders at Docket Entry Numbers 24, 25, 27, 42, 44 and 46;

Order dated June 3, 1999 at Docket Entry No. 124;

Memorandum Decision of the Ninth Circuit dated September 27, 2001 at Docket Entry No. 255;

Order dated August 30, 2002 at Docket Entry No. 310;

Memorandum Decision of the Ninth Circuit dated March 3, 2005 at Docket Entry No. 383;

Shoreside Amended Complaint dated August 31, 2005 at Docket Entry No. 406;

Metco Amended Complaint dated August 31, 2005 at Docket Entry No. 407;

North Star Amended Complaint dated August 31, 2005 at Docket Entry No. 409.

The discovery documents include:

Documents produced by USF&G and marked "USF&G" with some blank documents;

Documents produced by Nugget and marked "WEL";

Documents produced by Nugget and marked "Nugget";

Metco's Discovery Responses dated November 14, 2005;

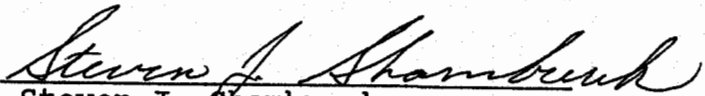
Metco's Supplemental Discovery Response dated November 28, 2005;

Shoreside's Third Supplemental Discovery Responses dated December 9, 2005.

All of the pleadings, discovery, disclosures and transcribed depositions are readily available for your review. Please let me know what you would like to review. If you have any questions, please contact me. Thank you for your attention to this matter. Best wishes.

Sincerely,

THE LAW OFFICE OF STEVEN J. SHAMBUREK

By: 
Steven J. Shamburek

Enclosures as noted

DATE 11/20

MEMO

TO J. Schoenhaar

FROM

JANICE WIPFIELD

410-685-
See from 1106
Courthouse Copy
Called about
~~UNPaid~~ UNPaid
INVOICE attached.
Please call her.
This is on file Jane
transferred to you.
9901-209083 01-1



USF&G
INSURANCE

Surety Group - Claim

Jane Bennett Poling, Esquire

Ph.: 410-205-1044

Fax: 410-205-0605

Mail Stop: LB0201

COPY

January 28, 1998

Northern Stevedoring & Handling c/o
Michael W. Sewright, Esquire
Burr, Pease & Kurtz
810 N Street
Anchorage, Alaska 99501-3293

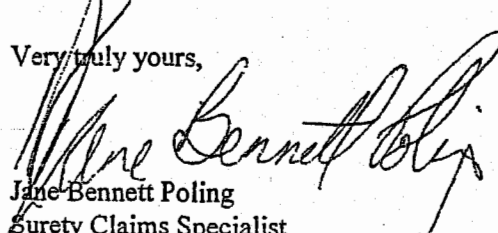
RE:	Principal:	Nugget Construction
	Obligee:	Department of the Army
	Claimant:	Northern Stevedoring & Handling
	Claim No.:	9901-S-209083-01-1
	Bond No.:	99-0120-50298-96-5
	Project:	Homer Spit Repair and Extension
	Subcontractor:	Spencer of Rock Products

Dear Mr. Sewright:

As you know on October 28, 1997, USF&G acknowledged receipt of your response alleging that you are owed money from Spencer of Rock Products for materials furnished on the above-referenced project. In our letter, we advised that in order for us to properly investigate your claim, you must complete and execute a Proof of Claim form (which was provided) and provide copies of documentation supporting your claim. As the date of this letter, we have not received your completed Proof of Claim form nor do we have any documentation in support of your claim. USF&G has not been provided sufficient documentation and information to investigate your claim. Accordingly, we respectfully deny your claim. If you believe, however, that review of additional documentation or information would alter our analysis, please provide same immediately to the undersigned.

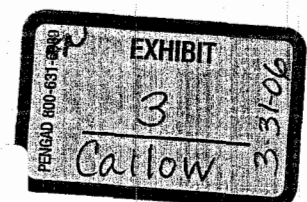
This correspondence and all prior or subsequent communications are made with express reservation of all rights and defenses that may be available to USF&G/FGIC or Nugget Construction, Inc. at law or in equity under the terms and provisions of the bond and contract documents.

Very truly yours,



Jane Bennett Poling
Surety Claims Specialist

JBP/jms



USF&G
INSURANCE

COPY

Surety Group - Claim

Jane Bennett Poling, Esquire
Ph.: 410-205-1044
Fax: 410-205-0605
Mail Stop: LB0201

October 28, 1997

Robert LaPore, President
Spencer Rock Products, Inc.
P.O. Box 244063
Anchorage, Alaska 99524

RE:	Principal:	Nugget Construction, Inc.
	Claim Number:	9901-S-209083-01-1
	Bond Number:	99-0120-50298-96-5
	Project:	Homer Spit Repair and Extension
	Claimant:	Spencer Rock Products, Inc.
	Obligee:	Department of the Army

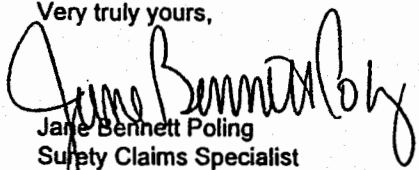
Dear Mr. LaPore:

This letter acknowledges receipt of your correspondence dated September 5, 1997 wherein you allege that Spencer Rock Products, Inc. is owed \$1,426,707.84 from Nugget Construction, Inc. for labor and/or materials furnished on the above-captioned project. In order for us to properly investigate your claim, we request that you complete and execute the enclosed Proof of Claim form. Please include as much detail as possible and attach copies of all documentation, including but not limited to, any relevant subcontracts, signed purchase orders, signed invoices, signed delivery tickets and a statement of account.

Please note that the Proof of Claim form must be signed by an authorized representative of your company and that the form must be witnessed, dated and notarized. If this matter has been resolved please notify the undersigned as soon as possible. In the interim, we shall continue our investigation of your claim which will include contact with our principal to determine its position with regard to your assertions.

This correspondence, the release of the Proof of Claim form, and all prior or subsequent communications are made with express reservation of all rights and defenses that may be available to USF&G/FGIC or Nugget Construction, Inc. at law or in equity, under the terms and provisions of the bond and contract documents.

Very truly yours,


Jane Bennett Poling
Surety Claims Specialist

cc: Nugget Construction, Inc.

Enclosure

JBP/fms

COPY

USF+G[®]
INSURANCE

Surety Group - Claim

Jane Bennett Poling, Esquire

Ph.: 410-205-1044

Fax: 410-205-0605

Mail Stop: LB0201

January 14, 1998

Robert LaPore, President
Spencer Rock Products, Inc.
P.O. Box 244063
Anchorage, Alaska 99524

RE: Principal: Nugget Construction, Inc.
 Obligee: Department of the Army
 Claimant: Spencer Rock Products, Inc.
 Claim No.: 9901-S-209083-01-1
 Bond No.: 99-0120-50298-96-5
 Project: Homer Spit Repair and Extension

Dear Mr. LaPore:

As you know, on October 28, 1997 we acknowledged receipt of your correspondence alleging that you are owed money from the principal for materials furnished on the above-referenced project. In our letter, we advised that in order for us to properly investigate your claim, you must complete and execute a proof of claim form (which was provided) and provide copies of all documentation supporting your claim. As of the date of this letter, we have not received your completed proof of claim form nor do we have documentation in support of your claim. USF&G has not been provided sufficient documentation and information to investigate your claim.

We have, however, contacted Nugget Construction and requested documentation in support of their backcharge. They have provided us a copy of the Support Agreement indicating that you will be responsible for costs associated with support provided by Nugget in the attempt to meet scheduling guidelines. Furthermore, we received documentation evidencing additional backcharge. All of these costs are in excess of your claim. Accordingly, we respectfully deny your claim. If you believe, however, that review of additional documentation or information would alter our analysis, please provide same immediately to the undersigned.

This correspondence and all prior or subsequent communications are made with express reservation of all rights and defenses that may be available to USF&G/FGIC or Nugget Construction, Inc. at law or in equity under the terms and provisions of the bond and contract documents.

Very truly yours,



Jane Bennett Poling
Surety Claims Specialist

JBP/jms

**USF&G**
INSURANCE

Surety Group - Claim

Jane Bennett Poling, Esquire
Ph.: 410-205-1044
Fax: 410-205-0605
Mail Stop: LB0201

December 3, 1997

Ron Niebrugge
Shoreside Petroleum, Inc.
P.O. Box 1189
700 Port Avenue
Seward, Alaska 99664-1189

RE:	Principal:	Nugget Construction, Inc.
	Claim Number:	9901-S-209083-01-1
	Bond Number:	99-0120-50298-96-5
	Project:	DACW85-96-C-0020, Homer Spit Repair and Extension
	Claimant:	Shoreside Petroleum, Inc.
	Obligee:	Department of the Army

Dear Mr. Niebrugge:

This letter acknowledges receipt of your correspondence dated November 26, 1997 wherein you allege that Shoreside Petroleum, Inc. is owed \$53,501.00 from Nugget Construction, Inc. for labor and/or materials furnished on the above-captioned project. In order for us to properly investigate your claim, we request that you complete and execute the enclosed Proof of Claim form. Please include as much detail as possible and attach copies of all documentation, including but not limited to, any relevant subcontracts, signed purchase orders, signed invoices, signed delivery tickets and a statement of account.

Please note that the Proof of Claim form must be signed by an authorized representative of your company and that the form must be witnessed, dated and notarized. If this matter has been resolved please notify the undersigned as soon as possible. In the interim, we shall continue our investigation of your claim which will include contact with our principal to determine its position with regard to your assertions.

This correspondence, the release of the Proof of Claim form, and all prior or subsequent communications are made with express reservation of all rights and defenses that may be available to USF&G/FGIC or Nugget Construction, Inc. at law or in equity, under the terms and provisions of the bond and contract documents.

Very truly yours,


Jane Bennett Poling
Surety Claims Specialist

cc: Nugget Construction, Inc.

Enclosure

JBP/jms

COPY



Surety Group - Claim

Jane Bennett Poling, Esquire
Ph.: 410-205-1044
Fax: 410-205-0605
Mail Stop: LB0201

April 7, 1998

Mr. Ron Niebrugge
Shoreside Petroleum, Inc.
Corporate Office
P. O. Box 1189, 700 Port Avenue
Seward, Alaska 99664-1189

RE: Principal: Nugget Construction, Inc.
Claimant: Shoreside Petroleum, Inc.
Claim No.: 9901-S-209083-01-1
Bond No.: 99-0120-40298-96-6
Project: DACW85-96-C-0020, Homer Spit Repair and Extension
Obligee: Department of the Army

Dear Mr. Niebrugge:

We have completed our review of your client's proof of claim and supporting documentation. It is my understanding that it is your contention that you supplied the fuel to Spencer Rock Products, Inc. It is the claimant's duty to provide documentation in order to demonstrate that all materials supplied were used on the above-referenced job.

After our review of the documentation provided by Shoreside Petroleum, Inc., we were unable to identify any delivery tickets which relate to the above-referenced project. Therefore, USF&G respectfully denies your claim. If, however, you feel you possess additional information which may compel a decision in the alternative, please provide same immediately.

This correspondence and all prior or subsequent communications are made with express reservation of all rights and defenses that may be available to USF&G/FGIC or Nugget Construction, Inc. at law or in equity under the terms and provisions of the bond and contract documents.

Very truly yours,

A handwritten signature of Jane Bennett Poling in dark ink.

Jane Bennett Poling
Surety Claims Specialist

JBP/jaw

**USF+G**
INSURANCE

Surety Group - Claim

Jane Bennett Poling, Esquire

Ph.: 410-205-1044

Fax: 410-205-0605

Mail Stop: LB0201

December 3, 1997

Greg Poyner, General Manager
Nugget Construction, Inc.
8726 Corbin Drive
Anchorage, Alaska 99507

RE:	Principal:	Nugget Construction, Inc.
	Claim Number:	9901-S-209083-01-1
	Bond Number:	99-0120-50298-96-5
	Project:	DACW85-96-C-0020, Homer Spit Repair and Extension
	Claimant:	Shoreside Petroleum, Inc.
	Obligee:	Department of the Army

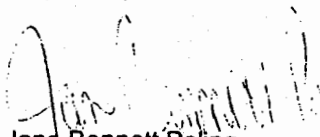
Dear Mr. Poyner:

Enclosed, please find correspondence dated November 26, 1997, which we have received from Shoreside Petroleum, Inc. wherein it is alleged that your company owes \$53,501.00 for labor or materials supplied on the above-captioned project.

We request that you promptly review this documentation and provide us with your written position and your intentions regarding this claim within fifteen (15) days. Please include all documentation that supports your position. If this claim has been paid or resolved, or is in the process of being paid, please forward to us a copy of your check or documentation evidencing the resolution of the claim.

Thank you for your cooperation in this matter.

Very truly yours,


Jane Bennett Poling
Surety Claims Specialist

Enclosure

JBP/jms



Surety Group - Claim

COPY

Jane Bennett Poling, Esquire
Ph.: 410-205-1044
Fax: 410-205-0605
Mail Stop: LB0201

February 17, 1998

J. Dennis Stacey, President
Chugach Rock Corporation
P.O. Box 91219
Anchorage, Alaska 99509-1219

RE: Principal: Nugget Construction, Inc.
Obligee: Department of the Army
Claimant: Chugach Rock Corporation
Claim No.: 9901-S-209083-01-1
Bond No.: 99-0120-50298-96-5
Project: Homer Spit Repair and Extension

Dear Mr. Stacey:

As you know, on November 17, 1997, we acknowledged receipt of your claim alleging that you are owed monies from the Principal for the materials furnished on the above-referenced project. Thereafter, we sent your information to the Principal and requested their position.

Nugget Construction's position regarding this matter is that Chugach Rock Corporation was not a materialman pursuant to the Miller Act because Chugach never "furnished" or "supplied materials." The case upon which they refer is *Woods Construction Company vs. Pool Construction Company*, 348 F 2d 687 (1965). We have read this case and have determined that Nugget has a reasonable defense to this claim. Furthermore, by letter dated November 10, 1997, you explained how you arrived at the amounts requested in your proof of claim, which is basically an estimated figure from the estimated job guarantees of the Project Engineer. You further explained that this figure is not exact and that once a final survey is received by the Corps of Engineers, the true total quantities will be revealed. Therefore, based on Nugget's argument that Chugach Rock Corporation is not a materialman or supplier pursuant to the Miller Act and the fact that you have not provided the necessary documentation to support your claim, your claim is respectfully denied. If you believe, however, that review of additional documentation or information will alter our analysis, please provide same immediately.

This correspondence and all prior or subsequent communications are made with express reservation of all rights and defenses that may be available to USF&G/FGIC or Nugget Construction, Inc. at law or in equity under the terms and provisions of the bond and contract documents.

Very truly yours,


Jane Bennett Poling
Surety Claims Specialist

JBP/jms

cc: Greg Poyner, General Manager, Nugget Construction
John Lukjanowicz, Esquire, Oles Morrison & Rinker, LLP
Jim Ferguson, Senior Vice President, Willis Corroon Corp. of Anchorage
Bill Wells, USF&G



USF&G
INSURANCE

Surety Group - Claim

COPY

Jane Bennett Poling
Surety Claims Specialist
PH: 410-205-1044
Fax: 410-205-0605
Mail Stop: LB0201

March 9, 1998

J. Dennis Stacey, President
Chugach Rock Corporation
P.O. Box 91219
Anchorage, Alaska 99509-1219

RE: Principal: Nugget Construction, Inc.
 Obligor: Department of the Army
 Claimant: Chugach Rock Corporation
 Claim No.: 9901-S-209083-01-1
 Bond No.: 99-0120-50298-96-5
 Project: Homer Spit Repair and Extension

Dear Mr. Stacey:

I have enclosed a copy of my letter dated February 17, 1998. Please refer to the second paragraph wherein Nugget Construction's defense regarding this matter is that Chugach Rock Corporation was not a materialman or a supplier pursuant to the Miller Act because Chugach never "furnished" or "supplied materials". Again, the case upon which they refer is Woods Construction Company vs. Pool Construction Company, 348 F.2d 687 (1965). After reviewing this case and determining that Nugget has a reasonable defense to this claim, USF&G has respectfully denied your claim. If you believe, that review of additional documentation or information would alter our analysis, please provide this documentation immediately.

This correspondence and all prior or subsequent communications are made with express reservation of all rights and defenses that may be available to USF&G/FGIC or our principal, at law or in equity under the terms and provisions of the bond and contract documents.

Very truly yours,


Jane Bennett Poling
Surety Claims Specialist

Enclosure

JBP/mlm



June 11, 1998

Mr. J. Dennis Stacey, President
Chugach Rock Corporation
P. O. Box 91219
Anchorage, Alaska 99509-1219

RE:	Principal:	Nugget Construction, Inc.
	Claim No.:	9901-209083-01-1
	Bond No.:	99-0120-50298-96-5
	Claimant:	Chugach Rock Corporation
	Project:	Homer Spit Repair and Extension

Dear Mr. Stacey:

Please be advised that we have received Nugget's response to your previous correspondence dated March 12, 1998.

After reviewing your correspondence along with Nugget's correspondence and revisiting the Woods Case, we have not deviated from our previous decision to deny your claim. Your correspondence indicated that Nugget itself took rock from the quarry directly to its job site to prosecute work under the prime contract. The issue is not whether or not Nugget itself took rock from the quarry, but whether royalty payments constitute labor and materials pursuant to the Miller Act. Again, as stated in the Woods case, royalty payments from materials extracted from a quarry are not recoverable under the Miller Act.

This correspondence and all prior or subsequent communications are made with express reservation of all rights and defenses that may be available to USF&G/FGIC or Nugget Construction, Inc., at law or in equity, under the terms and provisions of the bond and contract documents

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jane Bennett Poling".

Jane Bennett Poling
Surety Claims Specialist
Ph: 410-205-1044
Fax: 410-205-0605
Mail Code: LB0201

Enclosures

USF&G Corporation
PO Box 1138
Baltimore, MD 21203

William Grant Callow – Resume

Professional Information

Law Offices of William Grant Callow
425 G Street, Suite 610
Anchorage, Alaska 99501
Telephone: 907-276-1221
Facsimile: 907-258-7329
Description of practice: Trial and appellate practice.
Martindale-Hubbell rating: AV

Admitted to Practice: State of Alaska
U.S. District Court for the District of Alaska
United States Court of Appeals, 9th Circuit
United States Supreme Court
State of Wisconsin
United States District Court for the Western District of Wisconsin

Alaska Commissioner: National Conference of Commissioners on Uniform Laws
Term: 1987 to 2005.

Member: NCCUSL Executive Committee. Appointed: 1999 to 2001
Member: NCCUSL Scope and Program Committee, 1997-1999
Member: NCCUSL Committee to Draft Uniform Testimony of Minors Act, 1999 to present
Member: NCCUSL Committee to Revise the Uniform Rules of Evidence, 1997-99
Member: NCCUSL Committee to Revise the Uniform Certifications of Questions of State Law Act, 1993 - 95
Member: NCCUSL Committee to Redraft the Periodic Payment of Judgments Act, 1987-1990

Professional Organizations

Fellow: American Academy of Appellate Lawyers, elected 1991



William Grant Callow – Resume

Professional Information

Law Offices of William Grant Callow

425 G Street, Suite 610

Anchorage, Alaska 99501

Telephone: 907-276-1221

Facsimile: 907-258-7329

Description of practice: Trial and appellate practice.

Martindale-Hubbell rating: AV

Admitted to Practice:

State of Alaska

U.S. District Court for the District of Alaska

United States Court of Appeals, 9th Circuit

United States Supreme Court

State of Wisconsin

United States District Court for the Western District of Wisconsin

Alaska Commissioner: National Conference of Commissioners on Uniform Laws
Term: 1987 to 2005.

Member: NCCUSL Executive Committee. Appointed: 1999 to 2001

Member: NCCUSL Scope and Program Committee, 1997-1999

Member: NCCUSL Committee to Draft Uniform Testimony of Minors Act, 1999 to present

Member: NCCUSL Committee to Revise the Uniform Rules of Evidence, 1997-99

Member: NCCUSL Committee to Revise the Uniform Certifications of Questions of State Law Act, 1993 - 95

Member: NCCUSL Committee to Redraft the Periodic Payment of Judgments Act, 1987-1990

Professional Organizations

Fellow: American Academy of Appellate Lawyers, elected 1991

Member: American Bar Association
Member: Alaska Academy of Trial Lawyers
Member: Association of Trial Lawyers of America
Member: Alaska Bar Association
Member: Anchorage Inns of Court (President, 1998-99)
Member: Anchorage Bar Association

Work Experience

Private Practice, 1984 to present
425 G Street, Suite 610
Anchorage, Alaska 99501
Description of practice: General litigation and appellate practice.

Discovery Master of the Alaska Superior Court

General Counsel – Alaska Court System, 1979-1981
303 K Street
Anchorage, Alaska 99501

Reviser of the Alaska Rules of Court, 1979-1981
Alaska Supreme Court (appointed by the Chief Justice, 1979)

Commissioner – Alaska Code Revision Commission, 1979- 81
(Commission charged with revising the Alaska Corporation Code
and the Alaska Not-For-Profit Corporation Code. Appointed by
the Chief Justice of the Supreme Court of Alaska, 1979)

Member: Alaska Rules of Court Civil Rules Committee, 1979-81

Member: Alaska Bar Examiners Committee, 1983-87

Member: Alaska Pattern Civil Jury Instructions Committee, 1989-94

Moderator: New Ethics Rules of the State Bar of Wisconsin, 1991.

Trial Attorney, 1978-79
Alaska Public Defender Agency
Anchorage, Alaska

Law Clerk, 1977-78
Hon. Edmond W. Burke
Alaska Supreme Court
Anchorage, Alaska

Education

University of Wisconsin
Madison, Wisconsin
Major: Economics
Degree: BA (Honors), 1973

Academic Honors and Awards

President, University of Wisconsin Class of 1973

Brittingham Reverse Viking Scholar, 1972

Iron Cross Society – University of Wisconsin (University of Wisconsin senior men's honorary society for scholarship and service to the university community).
Elected: 1973

Society of the Mace - University of Wisconsin (University of Wisconsin junior men's honorary society for scholarship and service to the university community).
Elected: 1972

Outstanding Junior Student Award – University of Wisconsin Alumni Association,
1972

Outstanding Senior Student Award – University of Wisconsin Alumni Association,
1973

International Summer School (Brittingham RV Scholarship)
University of Oslo
Oslo, Norway
Diploma: 1972

University of Cambridge (Queens' College)
Cambridge, England
Diploma – Latin American Studies, 1974
Member: Queens' College Rowing Club, 1977-78

University of Wisconsin Law School
University of Wisconsin
Madison, Wisconsin
Degree: J.D., 1977
Honors: Dean's List

Community Service and Organizations

Distinguished Public Service Award – Anchorage Bar Association (2003)

Member: Steering Committee
Fundraising Committee – Alaska Legal Services Corporation
1998 to 2001

Commentator/Reviewer – Student Showcase Awards – University of Alaska,
Anchorage, 2001.

Member: Alaska Lawyer Pro Bono Program, 1986 to present

Co-Chairman – Alaskans for an Independent Judiciary, 1999 to present
Master of Ceremonies – Ceremony to honor Chief Justice Jay A. Rabinowitz upon
his retirement

Member, Board of Directors, University of Wisconsin Alumni Association, 1973-1975.

President, University of Wisconsin Alumni Club of Alaska, 1991-93.

Member: Midnight Sons Barbershop Chorus, 1984-88

Member: Anchorage Community Chorus, 1977- 1981

Member: KAKM Public Television Community Advisory Board, 1978-80

Personal Information

Date of Birth: May 14, 1951

Place of Birth: Milwaukee, Wisconsin

Raised: Waukesha, Wisconsin

Father: Hon. William G. Callow

Justice – Supreme Court of Wisconsin (retired)

Mother: Jean Z. Callow

Homemaker (not retired)

Sisters: Christine Callow

Katherine Wilkie

Graduated: Waukesha High School, 1969

Rotary International Scholar to Brazil, 1968-69

Languages: Portuguese; Spanish; Norwegian (limited); Danish (very limited)

References:

Mr. Jørgen M. Clausen
President – Danfoss A/S
Nordborgvej 81
DK 6430 Nordborg
Denmark

Hon. Alexander O. Bryner
Chief Justice - Supreme Court of Alaska
303 K Street
Anchorage, Alaska 99501

Michael W. Sewright
BURR, PEASE & KURTZ
810 N Street
Anchorage, AK 99501-3293
Telephone: (907) 276-6100
Fax No.: (907) 258-2530
Attorneys for North Star

DOCKETED

Due Date 9/22/05

ANSWER

☐ NO ACTION NECESSARY

99310.2

RECEIVED

SEP 02 2005

OMR & B, Inc.

cc: Smith/TM

Seattle

Client

cc: John +

Greg

SMITH

TM

GYH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

UNITED STATES OF AMERICA for the use of
NORTH STAR TERMINAL & STEVEDORE
COMPANY, d/b/a Northern Stevedoring &
Handling, and NORTH STAR TERMINAL &
STEVEDORE COMPANY, d/b/a Northern
Stevedoring & Handling, on its own behalf,

Plaintiffs,

and

Case No. A98-009 CIV (HRH)

UNITED STATES OF AMERICA for the use of
SHORESIDE PETROLEUM, INC., d/b/a Marathon
Fuel Service, and SHORESIDE PETROLEUM,
INC., d/b/a Marathon Fuel Service, on its own
behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER
ROCK PRODUCTS, INC.; UNITED STATES
FIDELITY AND GUARANTY COMPANY; and
ROBERT A. LAPORE,

Defendants.

NORTH STAR'S
AMENDED COMPLAINT

BURR, PEASE
& KURTZ
PROFESSIONAL CORPORATION
4 STREET
ANCHORAGE, AK 99501
(907) 276-6100

NORTH STAR'S AMENDED COMPLAINT

*United States ex rel. North Star, et al. v. Nugget Construction,
et al., A98-009 CIV (HRH)*

Page 1 of 26



45-40/#79199

Exhibit A

Page 45 of 45